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CRIME SURVEY

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William C. Jamison	*Secretary of the Survey Committee*
C. E. Gehlke, Western Reserve University, Cleveland	*Statistician*

AUTHORS OF REPORTS

Jesse W. Barrett, A.B., LL.B., LL.D., formerly Attorney-General State of Missouri.

M. A. Bliss, M.D., St. Louis.

J. E. Boggs, Attorney, Columbia, Mo., formerly President Missouri Circuit Clerks' Association.

C. E. Gehlke, Ph.D., Department of Sociology, Western Reserve University.

J. Hugo Grimm, Ph.B., LL.B., LL.D., formerly Judge of the Circuit Court St. Louis.

Herbert S. Hadley, LL.D., Chancellor Washington University, Chairman of the Committee on the Defects in Criminal Justice, of the American Law Institute, and Chairman of the Committee on Criminal Procedure of the National Crime Commission; formerly Prosecuting Attorney of Jackson County, Attorney-General of Missouri, and Governor of Missouri.

William C. Jamison, Secretary Survey Committee.

A. F. Kuhlman, M.A., Department of Sociology, University of Missouri.

Arthur V. Lashly, LL.B., formerly Prosecuting Attorney St. Louis County; member of Missouri Constitutional Convention, 1922-1923.

Raymond Moley, Ph.D., Department of Public Law, Columbia University; Research Director New York State Crime Commission; formerly Director of the Cleveland Foundation.

Bruce Smith, M.A., LL.B., National Institute of Public Administration, New York.

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To

GUY A. THOMPSON

able lawyer and public spirited citizen,
whose vision, capacity and energy made
possible the work of
The Missouri Association for Criminal Justice

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THE MISSOURI CRIME SURVEY

FOREWORD

This survey is an analysis of the operation of American state government in what is perhaps its most basic function—the enforcement of the laws which deal with serious crimes. It is essentially a self-analysis. The impulse from which the survey grew originated in Missouri, the necessary funds were contributed by Missourians and most of those who participated were citizens of the state. No attempt is made, moreover, at self-praise. The survey sought for the facts, favorable and unfavorable alike, and they are all presented here in line with the principle that the basis of progress is to know the truth.

It will be noted in all parts of this report that there was in this investigation absolutely no attempt to fix personal or official guilt or wrongdoing. The fundamental objective of the survey was the study of the system, the laws which condition it and the administrative practices which are characteristic of it. The conduct of those temporarily invested with public office except as it illustrates a general principle has not been weighed and appraised. We have avoided mentioning names, and when direct criticism is meted out, it has been only to illustrate a rule or practice of some broad significance. A survey is not a "probe" or "exposure." It should have strictly impersonal aims.

We have, moreover, sought to recognize a fact, just beginning to meet its deserved recognition in legal research,—that what is most needed is not merely a study of laws but of laws in operation, not merely rules of procedure but the manner in which these rules are used in the actual trial of cases. In thus introducing a large measure of reality into our study we have freely availed ourselves of a number of techniques such as medical science, statistics, sociology and business administration, all of which have come to have significance in the administration of the criminal law. We have also drawn upon the best experience of other states, recommending in many cases methods and devices of value proven elsewhere.

One of the most common errors in the determination of methods of reform is that of drawing conclusions from too small a number of cases. We are likely to be unduly influenced by the exceptional case, which because it is exceptional is prominently displayed. To avoid such an error and to determine with accuracy just what happens to criminal cases in the process of administering justice, we drew from a wide assortment of counties of the state all of the cases within a fairly characteristic period. We used the records of thirty-nine counties in all sections of the state, in every judicial circuit. Every size and every population type is represented. Therefore, where we draw conclusions concerning the disposition of criminal cases in the courts of the state we are upon firm ground for our observations are based upon ten thousand cases.

There is in this survey another check upon impractical conclusions. We have so far as possible used as staff members and as advisors men who have actually held public office and who have thus learned to test rules by the rigorous standards of experience. We have sought a blend of practical wisdom tested by strict scientific principles.

The survey originated in the legal profession. Its early development was due to the efforts of lawyers. It has not, however, continued exclusively as a lawyers movement as the roster of directors of The Missouri Association for Criminal Justice will show. This development illustrates the most useful procedure in such movements for improvement in the administration of justice—initiation by the bar and participation by many other community interests.

The conclusions reached in the various reports of the survey have, in many instances, an interest of a general character. Some of these conclusions are, we believe, important to an understanding of the problem of crime everywhere. Without in any way claiming to summarize the leading facts of the survey, it may be useful to set forth some of the conclusions which possess general interest.

One of the most significant indications of the manner in which the machinery of justice operates is a statistical determination of how many cases disappear at various stages along the process. This study of the "mortality" of cases will be found very carefully worked out in this survey with significant comparative data. These figures show an almost incredible contrast between cases begun and punishments decreed and a still more startling contrast between crimes committed and punishment administered. Let us consider robbery for example, a crime almost always committed by habitual criminals and always attended by grave danger to life. The ratio of robberies committed to punishments therefor, in St. Louis, was, in a year, twenty-five to one; in Kansas City, twenty-eight to one. For burglaries the ratios for the two cities were twenty-five to one and one hundred eighteen to one. These figures forcefully indicate that the margin of safety offered the professional criminal by our machinery for law enforcement is very large, so large, in fact, that the practice of a criminal profession is not unduly hazardous. The chances are mostly in favor of the professional criminal. But this is not the whole story. The few who are sentenced to the penitentiary for serious crimes are relatively soon at liberty. Of a group of 254 sentenced in St. Louis to the penitentiary for from two years to life, forty were not incarcerated because of commutations and paroles, and of the 214 actually sent to the penitentiary from St. Louis, 100 were given the minimum sentence of two years. After a period of about a year and a half only 114 were still serving. A life sentence has come to mean eleven years.

The survey gives an exceptional opportunity to compare the results of the administration of justice in various kinds of jurisdictions, especially to compare urban with rural areas. We found that liquor cases in urban areas are seldom permitted to become felony cases. In the rural areas the opposite is true. We found the inadequacy of the explanation that the trouble with the administration of justice in the United States is the persistence of rural institutions in modern urban conditions. This explanation ignores facts which are much more important. In many respects the City of St. Louis stands out in happy contrast with rural areas. Certain institutions coming down through the ages and surely devised for rural conditions are better administered in cities than country. The coroner's office, for example, is operating as well in the largest city as anywhere. Our statistical material reveals ample evidence that the theory to which we have referred is a wholly inadequate explanation of the shortcomings of criminal justice in America.

The survey's study of cases reveals the fact that the vast majority of sentences come after a plea of guilty rather than after a trial by jury. Thus the jury, once considered the very basis of the criminal process, is coming to be used with less frequency than before. Moreover, the grand jury is scarcely ever used for initiating cases, the information being used with more and more frequency.

In one of the reports of the survey there appears an analysis of Supreme Court decisions over a period of ten years, which was made for the purpose of determining exactly how much justification there is in recent criticism of our higher courts for alleged excessive technicality in reviewing criminal appeals. Our analysis indicates the exact status of this important question, and there is quite adequate evidence that the charge of a narrow legalism has been applied to our higher courts in altogether too indiscriminate a fashion.

Our study of the sheriff's office shows that additional police protection of rural districts is greatly needed. It is also clear that sheriff's themselves favor a state police department and would thus welcome relief from a function which they are neither equipped nor adequately empowered by law to perform effectively. It is shown also that the coroner's office should ultimately be abolished.

Our study of parole shows an astonishing breakdown of the whole system of punishment for crime in this state. It indicates that the method of release from penal institutions which is commonly thought to be most important, namely, serving the entire sentence, is in reality not important at all, and that parole and commutation of sentence have assumed an importance far beyond even what the ardent supporters of these measures have advocated. Parole has been reduced to a mere method of turning criminals loose without any reference to the fundamental principle upon which parole rests, namely, the determination of a parolee's conduct as a basis for the continuation of such parole.

The study of the prosecutor's office discloses that the prosecutor has great power which he liberally exercises to dispose of cases without trial. It is also indicated that we are getting as prosecutors comparatively young men without sufficient legal experience.

In addition to these important individual conclusions the survey has demonstrated generally that the machinery of justice is too cumbersome; that there is too little co-ordination and co-operation among the various agencies working to the same end; that there are too many laws standing in the way of the prosecution and conviction of persons guilty of crime; that there is too much lost motion and unnecessary expense in procedure; that there is laxity in prosecutions; and that there is altogether too much leniency exhibited in the granting of pardons, paroles and commutations.

It is difficult to speak in general terms of the spirit in which the recommendations of this survey are made. It will be found that a considerable number of recommendations point to a more summary and effective administration of justice. Those responsible for the survey, however, recognize the fact that certainty and severity of punishment are not the only corrective elements needed to meet the problem of crime. In our study of mental disorder we advocate the most modern methods of using science in the determination of responsibility for crime, and our recommendations concerning the administration of parole and pardons are not intended to destroy the effect of these humanitarian measures, but rather to restrict them to a scope where they can be really effective.

The correction of these shortcomings can come only after extensive readjustment of legal machinery and administrative practice. Our recommendations are made for the purpose of providing a program of such readjustments. They are, we believe, practicable and conservative. It is fair to assume that if they are adopted they will measurably improve the enforcement of the criminal law. They must, however, be sustained by an enlightened public opinion and the development of such an opinion is the task to which the organization which conducted this survey intends to devote its efforts. Thus the survey is conceived as only the beginning of a sustained statewide movement to bring about lasting improvement.

RAYMOND MOLEY.

INTRODUCTION

The people of Missouri in common with those of many other states have of late been increasingly conscious of the failure of the administration of the criminal law. The number of serious crimes has increased to an alarming extent. The press has been full of the accounts of the depredations of criminals, and leaders of public opinion have widely discussed methods of relief. One of the serious factors in the general situation is the fact that there seems to be a larger amount of organized crime than ever before, the leaders of which have shown dangerous energy and resourcefulness. They are, moreover, well financed and well equipped for their work. The ramifications of crime have reached far beyond the boundaries of cities, and thus the problem has become state-wide.

Responsibility for this situation was variously placed. The courts, police, prosecutors and juries were severely criticized, the management of penal institutions, welfare societies, social agencies, the home, the schools and the churches were not overlooked. In brief, it was not possible to fix the blame upon any one agency or institution. In searching for methods of relief the public met the same confusion. Suggestions of remedies were as numerous and as confusing as the explanations of responsibility.

Into this confusion of ill-considered explanations and half-formed remedies there came three years ago, a proposal that the problem be met by means worthy of its importance, and that a movement for reform be undertaken in which the first step was to be an effort to get the facts. This proposal was made by Mr. Guy A. Thompson then President of the St. Louis Bar Association, who in his address delivered at the close of his administration on May 7th, 1923, called attention to the importance of the problem of crime, and commenting upon it said:

> "All will agree that our criminal law and its administration are in urgent need of improvement and reform. Indeed it is manifest that our whole system of dealing with crime, criminals and delinquents, is so inadequate and inefficient as to constitute a dire and growing menace to public and private security. The thought occurs whether it would not be wise to have a survey made of our criminal laws and their administration by experts of such learning, experience and reputation as to insure not only the discovery of certain and lasting remedies, but also public confidence in the wisdom and potency of the remedies proposed. Of course the St. Louis Bar Asso-

> ciation alone could not defray the expense of such an enterprise, but it could bring it to the attention of the municipal authorities and to the public-spirited, with reason to believe that funds adequate to finance it would be ultimately forthcoming."

The idea of a state-wide survey in Missouri thus had its origin. Subsequently, Mr. Thompson proposed that the organization to make the survey be a state-wide association with the responsibility not only to find facts but to mobilize and direct public opinion to the end that there should be not only a survey but that such recommendations for administrative and legislative changes as the facts might show were necessary should be put into effect. This advocacy of a state-wide survey by a state-wide organization met with instant public approval. In the following December Mr. Thompson was elected President of the Missouri Bar Association and he at once set about to carry his proposals into effect. He submitted to the Executive Committee of that Association on February 16, 1924, the following resolution which was adopted:

> "Resolved by the Executive Committee of the Missouri Bar Association:—That the President be authorized to appoint a Special Committee on Crimes, Criminal Law and Procedure to investigate the growth and condition of crime, criminal law and procedure in Missouri and recommend (a) whether it be advisable that an organized movement be undertaken for the purpose of correcting any deficiencies that may exist in our criminal laws and in their administration, and (b) if such movement be advisable, what part, if any, the Missouri Bar Association should take therein."

Pursuant to the authority thus given, Mr. Thompson appointed the following Committee: Arthur V. Lashly and Judge J. Hugo Grimm of St. Louis, Alfred N. Gossett and Henry N. Beardsley of Kansas City, A. T. Dumm of Jefferson City, Judge John I. Williamson of Kansas City, Stephen K. Owen of St. Joseph, P. T. Allen of Springfield, and Edward J. McCullen of St. Louis. Charles F. Zukoski of St. Louis was appointed Secretary of the Committee.

This Committee reported in June, 1924, recommending, as suggested by Mr. Thompson, the formation of a state-wide organization for the purpose of making a state-wide survey to determine the facts. The report was approved by the Executive Committee of the Missouri Bar Association and by the Association itself at its annual meeting at Joplin in the following October. Meanwhile, Mr. Thompson as President of the Missouri Bar Association had called a meeting of representatives of various civic, commercial, fraternal and other important organizations throughout the State, to be held October 15, 1925, at the Capitol in Jefferson City. That meeting was attended by over one hundred representative persons from all parts of the State. Among the organizations represented were the St. Louis Chamber of Commerce, Kansas City Chamber of Commerce, the St. Louis Traffic Club, Missouri Association, Kansas City Council of Social Agencies, Church Federation, Bankers' Club, Missouri State Bankers' Association, Missouri Bar Association, Associated Industries of Missouri, Missouri Farm Bureau Federation, Real Estate Board of Kansas City, Missouri Medical Association, St. Louis Safety Council, The Bar Association of St. Louis, Association of Team and Truck Owners, Order of Railway Conductors, Association of Master Plumbers, Citizens' League of Kansas City, Missouri Welfare League, American Institute of Architects, Catholic Women's Association, Rotary Clubs, Kiwanis Clubs, Optimist Clubs, Lions Clubs, Kansas City Y. M. C. A., Kansas City Y. W. C. A., Missouri League of Women Voters (state and city), Wednesday Club, Conference of Missouri Appellate and Circuit Court Judges, American Institute of Accounting, and many others.

There was formed at that meeting The Missouri Association for Criminal Justice, incorporated under the laws of Missouri, and by-laws were adopted. A Board of Directors of thirty—ten from St. Louis, ten from Kansas City and ten from interior Missouri—was provided for in the by-laws and elected at this meeting.

The purposes of the organization were widely reported in the press of the state, and great impetus was given the movement by the action of Mr. Albert Bond Lambert, a prominent citizen of St. Louis, who on February 10, 1925, gave a dinner at which were present over 100 leading men of St. Louis, Kansas City and interior Missouri. The meeting was addressed by Chancellor Herbert S. Hadley, Senator X. P. Wilfley, Judge T. C. Hennings, President of the Association, Mr. Palmer Clarkson, President of the St. Louis Chamber of Commerce, Casper S. Yost, Editor of the Globe-Democrat, and Mr. Henry B. Wallace and others.

Out of this meeting grew a Finance Committee headed by Mr. H. J. Pettengill, Chairman of the Board of the Southwestern Bell Telephone Company, who organized an intensive campaign for funds to defray the expenses of the survey. The Association had no membership dues but was dependent for its funds upon voluntary public contributions. A fund of approximately $40,000 was pledged, all of which was collected and expended in the survey. Later approximately $25,000 additional was received through popular contributions. Thereupon Mr. Arthur V. Lashly, attorney of St. Louis, and Mr. A. F. Kuhlman of the University of Missouri, were selected as, respectively, Operating and Assistant Operating Director.

At the inception of the survey in 1925 a Survey Committee consisting of Mr. Guy A. Thompson, Senator X. P. Wilfley and the undersigned, Judge John I. Williamson and Judge Romulus E. Culver was appointed. Throughout the survey the first three named, constituting the St. Louis representation on this committee, served as a group of consultants to the survey staff. Almost daily they gave freely of their time when called upon to assist on innumerable questions of method and policy. This participation in the actual direction of the survey was very important because it was thus possible to link up the survey staff very closely with the governing board.

At the beginning of the present year (1926), the survey having been completed, it was determined that between meetings of the full Board, all the executive and administrative affairs of the Association should be conducted by the President and the Survey Committee, and that the reports should be finally approved by the Survey Committee. Accordingly that committee was enlarged and the following appointed to constitute it: Guy A. Thompson, St. Louis, Chairman; X. P. Wilfley, St. Louis, Arthur V. Lashly, St. Louis, Herbert S. Hadley, St. Louis, Romulus E. Culver, St. Joseph, J. P. McBaine, Columbia, and the undersigned. This committee has directed the entire undertaking to its final conclusion. To the Association's reports and to the additional manifold questions that have arisen, it has devoted time, thought and attention to a degree that can hardly be appreciated by those not intimately associated with the work.

The actual task of making the survey began on April 1, 1925, with the organization by the Operating Director of a staff and the preparation of plans, outlines and schedules for the gathering of information.

Salaries were paid to the Operating Director and the Assistant Operating Director and to the office force and the twenty-eight field men. However, both Mr. Lashly, the Operating Director and Mr. Kuhlman, the Assistant Operating Director, rendered additional valuable services without compensation.

Dr. Raymond Moley was engaged as Consultant and Editor, and he rendered invaluable service as such during the planning of the survey and in the determination of its scope and divisions of inquiry, in the organization of its work and in the actual prosecution of it. He is also responsible for two of its reports and has served as editor of the entire survey.

Some of the authors were paid for their services in connection with the preparation of their reports and others who wrote reports, to-wit: Chancellor Herbert S. Hadley, Jesse W. Barrett, and Dr. M. A. Bliss, served in that relation without compensation.

None of the officers or directors has at any time received any compensation, though some of them, at great personal sacrifice, have devoted much time and attention to this enterprise. The members of the various Advisory Committees also gave their services without charge.

THE POLICIES, SCOPE AND METHODS OF THE SURVEY

The scope of the survey was restricted to the original purpose, viz., that of gathering the facts concerning the administration of the criminal laws and upon the basis of these facts the drawing of conclusions and the making of recommendations. It is obvious that in attempting a study of such a far-reaching governmental interest as this, some very definite limitations in scope had to be determined in advance. The more important of these limitations were:

A. The inclusion of felonies only in the study of cases and the consideration of only those agencies concerned, for the major part, with felonies. Thus at once this survey renounced all concern with minor infractions of the law and avoided the important but vexing and controversial problems of vice and other such violations of the moral code.

B. The causes of crime were not studied because they are still entangled in unsettled questions concerning economics, education, sociology, ethics and religion. The existence of personal responsibility was taken somewhat for granted, although as the reports show, especially the one on medical relations, that we were not unaware of causes beyond the control of the individual.

C. Penal treatment was not considered except in those aspects which concerned releases, such as pardons, paroles and commutations. With the internal administration and policies of jails, reformatories, the penitentiary and other institutions for punishment or correction, we did not concern ourselves.

D. It will be clear that a survey intended to effect remedies of a state-wide character could not touch upon Federal crimes or their punishment.

E. The laws defining crimes and their punishments were not considered.

F. Juvenile courts, women's reformatories, the education and ethics of the bar (except education in the case of prosecuting attorneys), and such non-official but publicly responsible agencies as the press and the church were not considered.

Within that long list which our state laws define as felonies we recognized as our chief concern such crimes of violence as homicide, robbery and burglary, these being the specialty of the so-called "professional criminal." This limitation, however, was not observed in our case study of all felonies including such violations of the state liquor laws as are classed as felonies. The tabulation of liquor cases was made separately. While our chief concern was with crimes of violence, it is clear that what we say of the administration of those agencies concerned in the punishment of felonies is of interest not only to those who feel that the most important problem concerns crimes of violence, but to those whose concern is in the violation of other laws as well.

The foregoing indicates the things we did not attempt to study. There are certain other limitations of time and geographical jurisdiction which will appear later, but with these exceptions our survey is a comprehensive picture of the actual operation of an American Commonwealth in the performance of a great—perhaps its greatest—function, the preservation of law and order. With due apology for perhaps a seeming consciousness of the importance of our work, we are essentially correct in calling attention to the fact that such a picture has never been drawn before. The crime problem is a state problem; the laws governing it are essentially state laws; the remedies must be state-wide. The significance of this, the first state-wide survey, is therefore obvious.[1]

Manifestly it was impossible without the expenditure of a very much larger sum of money than was at the disposal of the Association, to get the facts in all felony prosecutions in every county of the state. Therefore it was decided to examine the records with respect to felony cases in only a limited number of typical counties well enough distributed to be truly representative of conditions in the whole state. Accordingly one county in each of the 38 judicial circuits was chosen.

Outside of the City of St. Louis, which is also a county, the County of St. Louis, Jackson County, in which is located Kansas City, and Buchanan County, containing St. Joseph, there are few of the 38 judicial circuits which have less than two counties. The basis of selection of the county in each judicial circuit containing more than one county in which to make the survey was the largest average number of felons sent to penal institutions during a period of the last six years. In one of the circuits, the Fourteenth, two counties were surveyed. Cole County in that circuit was selected because it contains the seat of government, but Cooper County was also selected. The three cities of St. Louis, Kansas City and St.

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[1] The most important study of a similar character made elsewhere was the survey of "Criminal Justice in Cleveland" made by the Cleveland Foundation in 1921 and limited to a single city.

Joseph, all under state-controlled police departments, were surveyed as separate units.

The Association employed 28 field men drawn largely from practicing lawyers and the most recent graduates and upper classmen in the three laws schools of Washington University, St. Louis University, and the State University at Columbia. These men were trained at the headquarters of the Association in the City of St. Louis in the use of the schedules and forms for collecting the information. Beginning June 1, 1925, they were sent into the various counties. They were assisted in most of the circuits by a local lawyer suggested by the judge of the circuit. The Operating Director, in most instances, accompanied the men to each county and started the work. These men examined the records of the circuit clerks, coroners, sheriffs, justices of the peace, prosecuting attorneys and other officials having some part in the administration of the criminal laws. From the records in these offices complete data on felony cases were collected covering a two-year period, October 1, 1922, to October 1, 1924, in all of the counties except Jackson, Buchanan and St. Louis City. The record of each case was copied beginning with the issuance of the warrant and including each step in each case up to its final disposition. Where changes of venue were taken the case was followed to the county where it was tried.

In the three large counties mentioned the period covered was from October 1, 1923, to October 1, 1924. The City of St. Louis was the only place in the state where a record could be had of criminal complaints, arrests made and warrants refused. This was possible because practically every case in the city began with the arrest by the Police Department which kept a record enabling the investigators to begin with the record of arrest instead of the issuance of the warrant. In Kansas City a partial record of this kind was obtained, but it consisted of only about forty percent of all the cases in Jackson County. The other cases originated in the office of the prosecuting attorney, justices of the peace or grand jury. In such cases the police had no record of the arrest, the same having been made by the sheriff after the warrant was issued.

Approximately ten thousand cases were examined, and a card containing the available information about each case from its inception until its final disposition was filled out by the investigators.[1] In addition to the information collected in this manner, facts pertaining to the administration of the offices of clerk, sheriff, prosecuting attorney, coroner, and justices of the peace, were collected by the men as they went along. Questionnaires of a searching kind were prepared and sent to all of the prosecuting attorneys of the state and to former prosecuting attorneys who immediately preceded the present incumbents. Similar questionnaires were prepared and sent to all of the sheriffs, to all of the coroners and to all of the circuit clerks of the state. A set of questions was submitted to the circuit judges asking for their ideas concerning all phases of judicial administration and their opinions of necessary changes in the criminal laws.

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[1] The card form is shown on pp. 537, 538, 539.

Eleven divisions of the survey were recognized in the preparation of final reports. These divisions were based upon what seemed to be logical sections of the administration of criminal justice. The preparation of each report was entrusted to a person qualified by experience, expert knowledge, and the ability to gather, state and interpret facts. From the detailed information thus gathered the reports published in this volume were prepared.

After all of the reports were completed they were submitted to advisory committees, the names of the members of which are set forth herein, all of whom were appointed with a view to their special fitness by reason of experience in the various fields covered by the survey. Thereafter they were rewritten by the authors and edited by Dr. Moley. They were then submitted to each member of the Board of Directors and finally to the Survey Committee with the criticisms of the other members of the Board. Again they were submitted to Dr. Moley for final editing and then they were released to the public at meetings arranged for the purpose in different parts of the state held at intervals of about two weeks. Thus public interest was sustained and informed, opportunity for public assimilation of each report was afforded, and the Association's work of organization throughout the state was encouraged.

The cost of administering the criminal laws is the price which society pays for its protection. The tax-payers must meet this bill. It therefore seemed important in our survey of the administration of criminal justice in Missouri to ascertain what it costs the tax-payers for protection in contrast with the degree of protection which they receive. Through inquiries directed to every official in the state having to do with the administration of the criminal laws, facts were gathered showing the total cost throughout the state in 1923 and 1924 of police, prosecuting attorneys, sheriffs, courts, penal institutions, including jails, criminal costs paid by the state and in the counties, and the proportion of salaries and expenses of offices of all state officials dealing in any manner with the administration of criminal laws. These facts disclose that the cost to the tax-payers in the year 1923 was $8,715,385.42, and increased in 1924 to $9,183,637.16.

There has been no attempt in this survey to stress comparisons indicating the increase in crime. It is a matter of common knowledge, based on police reports and statistical data gathered in recent years through many sources, that crime has increased disproportionately to the increase in population. This survey has demonstrated beyond any question of a doubt that the operation of the machinery for crime prevention in this state is not only expensive, but is not producing results in actual punishment of persons convicted of crime. Notwithstanding the importance of this function of the government, there is no way provided by law for checking up on the effectiveness of the operation of the machinery. No private enterprise expending nine million dollars per year could long exist without providing adequate means of determining the relation of cost to output. The product of the operation of the various agencies for the administration of criminal justice in Missouri is measured in terms of protection of the lives and property of the people. When the people of Missouri are called upon each year to pay out nine million dollars for protection of the most sacred things in life, they have a right to expect a reasonable return on their investment. They are not getting it.

We have apparently gone far beyond reasonable or safe limits in our desire to turn men out of the penitentiary and reformatories. The three-fourths law was enacted in this state a number of years ago for the benefit of convicts in our penal institutions who by reason of good behavior were entitled to their release after having served three-fourths of their sentences. Through the use of the commutation there has been a gradual decrease since 1915 in the number of those who serve out even three-fourths of their sentences. Note the following data from the penitentiary records of 1915 to 1922, inclusive:

	1915–16	1917–18	1919–20	1921–22
Released under ¾ law	1,420	901	160	124
Released under commutations	897	1,544	1,537	1,542

The report on pardons, paroles and commutations indicates a growing tendency on the part of those in charge of our penal institutions to release prisoners before anything like adequate punishment has been administered. Reference to the mortality tables and record of releases by parole, commutation and pardon in succeeding in which warrants were issued, the warrant representing the judgment pages shows an astounding condition. Out of the thousands of cases of some official or set of officials that the person to be arrested was guilty of the crime, the line fades away until when you reach the place where you would expect to find someone paying the penalty for his crime there is no one there. It is not hard to understand the relation between this situation and the increase and prevalence of crime.

The prospect of punishment no longer deters those who contemplate the commission of crime.

It is not possible in every jurisdiction in this state to determine how many crimes are committed. There is no record except in the very large cities. But that record fully justifies Chief Justice Taft's grim characterization of the administration of the criminal law:

> "The administration of criminal law in the United States is a disgrace to civilization. . . . The trial of a criminal seems like a game of chance, with all the chances in favor of the criminal, and if he escapes he seems to have the sympathy of a sporting public."

THOMAS C. HENNINGS,
President.

PART I

THE METROPOLITAN POLICE SYSTEMS

By

BRUCE SMITH, M.A., LL.B.
National Institute of Public Administration
New York

ADVISORY COMMITTEE

J. W. Fristoe	St. Louis
Elliott H. Jones	Kansas City
John E. Wilson	Kansas City

THE METROPOLITAN POLICE SYSTEMS[1]

The First Line of Defense Against Crime

St. Louis, Kansas City and St. Joseph provide interesting backgrounds for a study of urban police administration. These cities vary widely in population and characteristics, each having its distinguishing features from the police standpoint, but they are similar in the fact that they are all adjacent to the boundaries of the state, and therefore partake of the difficulties inherent in such location. Of these, St. Louis alone is burdened with that heterogeneity of population to which is commonly ascribed the high crime rate of American cities. All three are notable for the fact that the native stock is increasing in numbers more rapidly than the foreign stock and negroes. Kansas City alone has enjoyed a rapid and spectacular growth. On the face of these facts, at least, there is nothing which would tend to indicate that any extraordinary crime condition exists. Yet available statistics confirm the popular impression and the opinions of police officers that major felonies have assumed grave proportions.

The homicide rate of Missouri cities is twice that which obtains in American cities as a whole. St. Louis and Kansas City clearly lead all other cities of comparable size, and in the cities of only five states is the white homicide rate higher than that prevailing in the cities of Missouri.

The situation is similar when other groups of major felonies are considered. Thus, the rates for burglary and larceny insurance are without exception higher in Kansas City, Missouri, and Kansas City, Kansas, than in any other part of the country. The premium rates for Kansas City are *twice* those of Chicago, Detroit, Cleveland, St. Louis, and Los Angeles; *three times* those of New York, Philadelphia, Baltimore, Pittsburgh, San Francisco, Buffalo, Washington, Newark, Cincinnati, New Orleans, Minneapolis, Seattle, Indianapolis, Jersey City, Rochester, and Denver; *four* times those of Boston, Milwaukee, Portland (Me.), Providence, St. Joseph, and a host of others. An almost identical condition exists with respect to robberies.

In the matter of homicides and residence burglaries there are indications that the peak has been reached. Kansas City is distinguished for a resurgence of business burglaries, however, and

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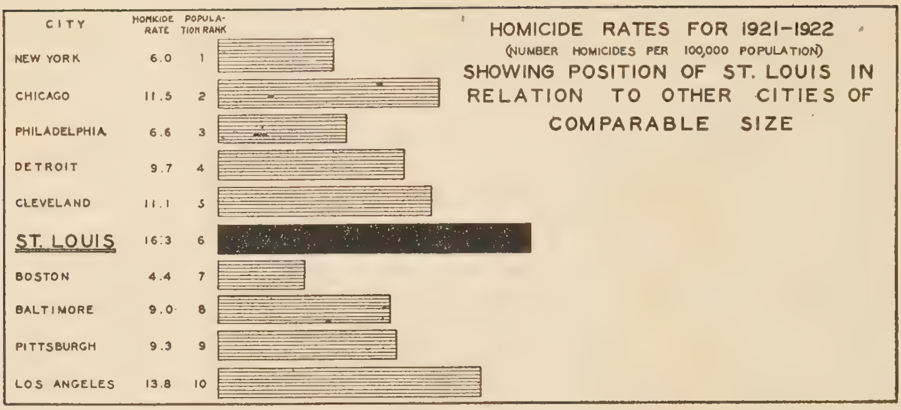
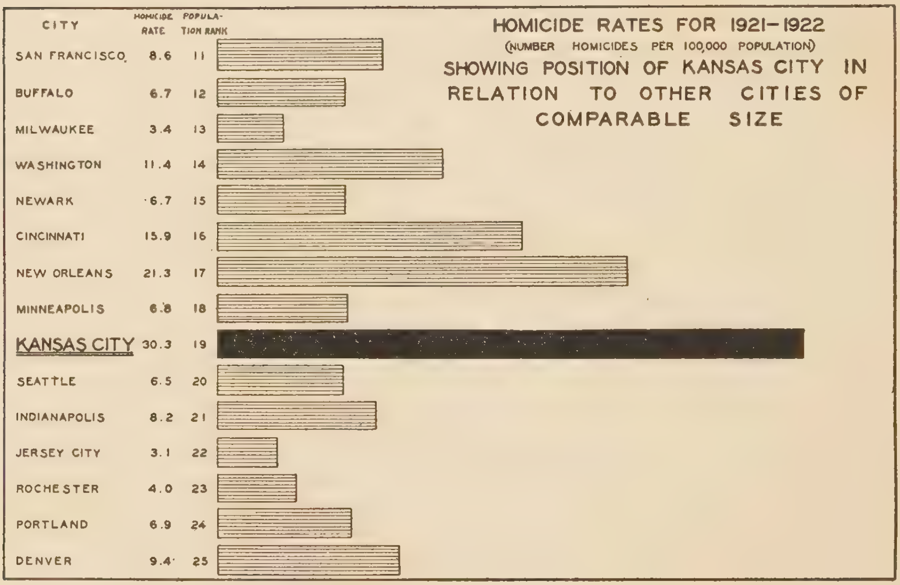
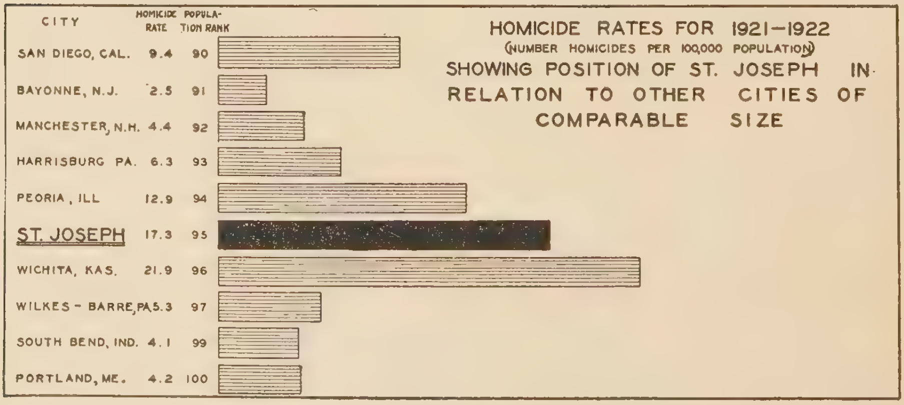
[1] Survey made in August and September, 1925.


HOMICIDE RATES FOR 1921–1922
(NUMBER HOMICIDES PER 100,000 POPULATION)
SHOWING POSITION OF ST. LOUIS IN RELATION TO OTHER CITIES OF COMPARABLE SIZE


HOMICIDE RATES FOR 1921–1922
(NUMBER HOMICIDES PER 100,000 POPULATION)
SHOWING POSITION OF KANSAS CITY IN RELATION TO OTHER CITIES OF COMPARABLE SIZE


HOMICIDE RATES FOR 1921–1922
(NUMBER HOMICIDES PER 100,000 POPULATION)
SHOWING POSITION OF ST. JOSEPH IN RELATION TO OTHER CITIES OF COMPARABLE SIZE

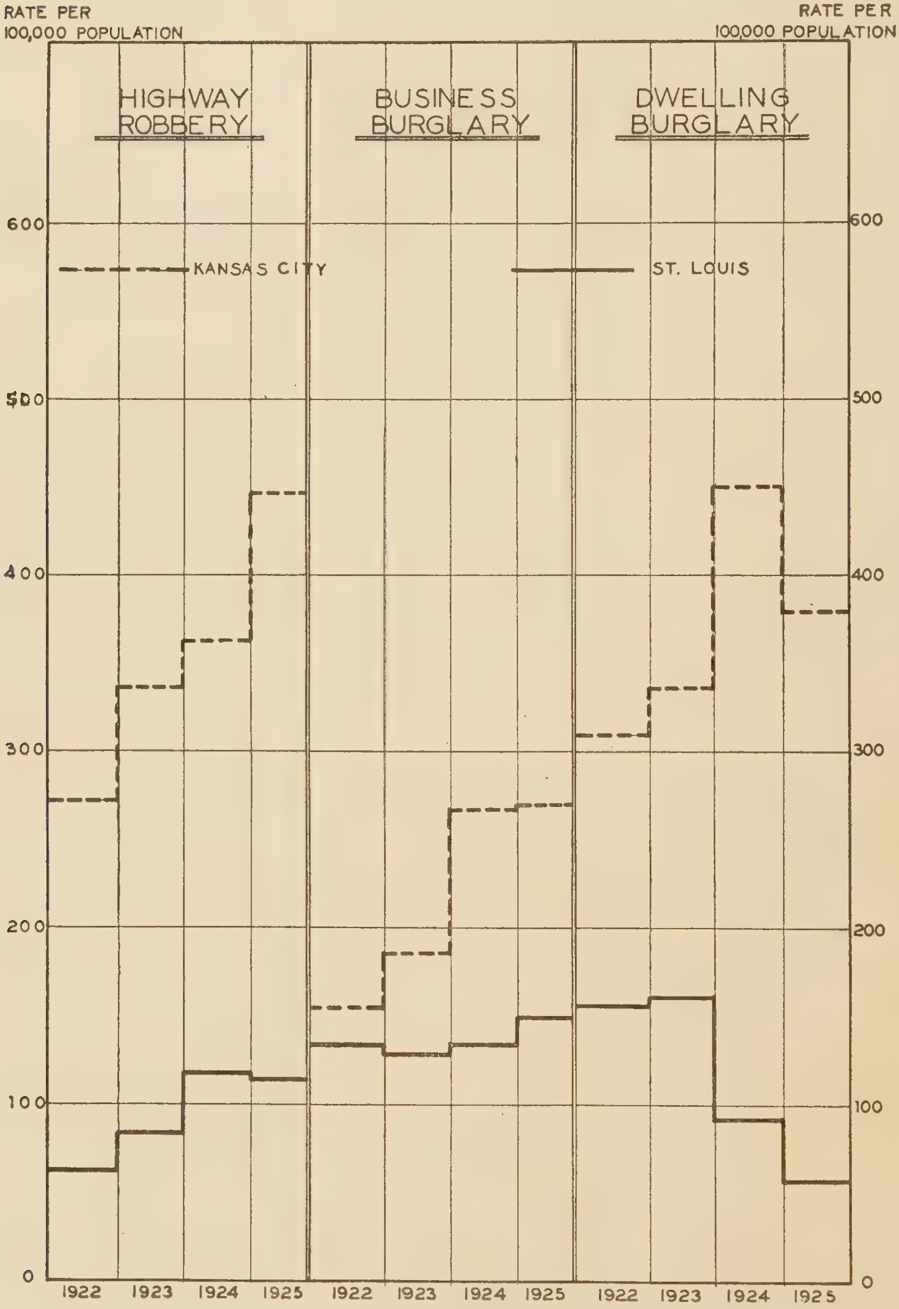
St. Louis for the recent rapid increase of business robberies and holdups. Highway robberies have risen so high in Kansas City as to dwarf by comparison the record of St. Louis in this respect. Automobile thefts in St. Louis have doubled during the past two years.

It should be stated in all fairness that the police are not exclusively responsible for the situation just described. It is probably a true generalization to say that the crime conditions of any community depend upon at least three factors. The first of these is concerned with the racial origins and the characteristics of the population. Viewed from this angle St. Louis is the only one of the three cities in which the white native stock is outnumbered. Mere census figures do not tell the whole story, however. There seems to be no question but that both Kansas City and St. Louis are afflicted with numerous floating elements of criminal inclination and tendency. While such as these are not necessarily a local product, they play an active part in raising the crime rates of these cities. Discussion of the appropriate means of dispersing them is reserved for later consideration. A second factor consists in the degree of probability of apprehension. For this the police must assume almost complete responsibility, subject only to the limitations relating to such matters as proximity to state boundaries and similar jurisdictional difficulties. A third factor is the probability of conviction and punishment which involves the other agencies concerned with criminal justice far more than the police.

The police constitute the first line of defense against crime and criminals; they are a large, if not a preponderating factor, in the entire situation. While the police cannot attain complete effectiveness unless they are adequately supported by the prosecutors and the courts, there are a number of matters which concern the police departments almost exclusively and which must be capably administered if significant results are to be obtained. The selection and organization of the police force, the methods employed in directing and controlling police activities, the number of men available for duty, the equipment with which they are provided, the management of personnel, the distribution of the force for patrol purposes, the handling of criminal investigations, and the means available for criminal identification, all have an intimate bearing upon the result.

The police no longer consist of a loose collection of public watchmen. They are made responsible for the day-to-day regulation of a complex society. Upon them is imposed the administration of a highly diversified group of activities. They are given powers which cannot be too narrowly restricted without serious limitation upon police effectiveness. They therefore require constant supervision and

COMPARATIVE RATE FOR CERTAIN FELONIES
ST. LOUIS AND KANSAS CITY
1922 TO 1925



control, for almost every act which a policeman performs encroaches in some degree upon complete freedom of action.

Taken by and large, American experience in the management of police forces has been far from a happy one. Abuse of power often has been linked with official incapacity in such manner as to alienate the sympathies of the very elements in each community to which the police should be able to look for approval, commendation, and support. The steady improvement in recent years in certain phases of police administration cannot obscure this fact. A distinct police problem still remains. Until it is solved there can be no satisfactory administration of criminal justice. The functioning of that vast, complicated, and expensive machine which is represented by prosecutors, coroners, courts, and jailers, largely depends upon the integrity, intelligence, and general capacity of the solitary policeman walking his beat. The quality of his work conditions everything that has to do with crime control.

Numerical Strength of Police Forces.

The police defenses set up by the cities for the protection of life and property are most accurately stated in terms of man-power. It is necessary, however, to go behind the formal titles which have been allotted to the various grades and positions to determine the exact nature of the duties performed in each case. The following table recognizes this and indicates the numerical strength of each service in the several police departments:

NUMERICAL STRENGTH AND DISTRIBUTION OF POLICE DEPARTMENTS

	St. Louis	Kansas City	St. Joseph
General Administration	107	54	10
Uniformed Force	1,699	426	74
Detective Division	156	64	16
Bureau of Criminal Identification	10	4	2
Women's Bureau	18	—	—
Custodial Service	106	29	4
Mechanical and Labor Service	95	54	5
Totals	2,191	631	111

While there are no accepted rules or standards by which reliable conclusions may be drawn from such a summary, it nevertheless serves to emphasize a fact that is fundamental to all conclusions which later appear. These three forces vary so widely in numbers, and the conditions with which they deal are in some respects so dissimilar, that sweeping generalizations are impossible. The pages which follow are devoted to a consideration of the major features characterizing the administration of each force, with such comparisons and contrasts as may properly be drawn.

ORGANIZATION

Statutory Basis of Metropolitan Police.

The three metropolitan police departments are the creatures of statutory enactment. Not only is the scheme of organization set out in full with the number and compensation authorized for each rank and grade, but there is also a considerable degree of detailed regulation relating to matters which are largely of an administrative nature. These prescribed methods are occasionally so far removed from the realities of police duty that, if scrupulously observed, they would seriously hinder the several forces in the execution of their functions. Provisions which require that platoons shall be of equal size, that a city shall be divided into a given number of patrol districts, or that a specified system of criminal identification shall be employed, may quickly become obsolete. The police department is then put to the necessity of devising ways and means for the circumvention of the plain meaning and intent of the very laws upon which its existence depends. At best such requirements are a burden and a handicap to the satisfactory administration of the forces to which they apply.

With respect to some matters, detailed regulation arises from the fact that the metropolitan police forces are independent units created by the state but supported at local expense. The inevitable clash of interests which follows has produced a body of legislative enactments designed to preserve and protect the extraordinary powers exercised by the several boards of police commissioners. In order to safeguard the latter against the withholding of adequate funds by the city governments, the statutes provide that the police boards shall virtually exercise the power of appropriation for the support of the police department. That a local body, appointed by central state authority, should exercise both the power to appropriate and to expend, is an extraordinary situation, and contrary to the most elementary principles of governmental control. In its effort to bridge the gap between the normal spheres of the state and municipal governments, the legislature has been forced to adopt measures which are not in harmony with good administrative principles.

The Question of State Control.

With the police boards of its three largest cities appointed by the governor with the consent of the senate, Missouri presents a most striking example of state control of police. This system came into general use about the middle of the nineteenth century and enjoyed wide popularity for thirty years or more. Although a majority of the larger cities have operated under it at one time or another, it has gradually been discarded in favor of municipal operation. Boston, Fall River, Mass., Baltimore and Montgomery, Ala., are now almost the only other cities which still adhere to the scheme.

State control was ushered into Missouri with the Civil War, and has never, seemingly, been in great danger of being discarded. Although other states have actively experimented with the plan, and have employed every conceivable combination and device in an effort to make it operate successfully, the police boards in St. Louis, Kansas City, and St. Joseph are essentially the same now as when the structure was originally set up.

There nevertheless exists a certain diversity of practice in these three cities with respect to the number of commissioners, the terms for which they shall serve, and the inclusion or exclusion of the mayor as an *ex officio* member of the board. These differences have no significance other than as an indication that state control in Missouri partakes somewhat of the same features which have characterized its use in other states.

State control of the police rests upon an established legal and historical basis. The police exercise a function of the state, not of the municipality.[1] They are charged with the enforcement of state laws. In making arrests and executing judicial process under the statutes they act for the state, and in the name of the state. Furthermore, many of the abuses of police administration have been linked directly with municipal politics, and in some of the larger cities the police have been closely associated with vice and crime. So runs the argument in favor of state control.

When practical considerations are introduced, however, the case is not so clear. State control in Missouri has made it necessary to grant to the police boards extraordinary powers in the matter of appropriations from tax moneys,[2] and when the state and municipal governments have been administered by opposed political parties there have been serious clashes over matters of financing which have obscured the broad questions of public policy involved. The system of state control has also securely attached board administration to these departments.

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[1] The metropolitan police acts "are based upon the elementary propositions that the protection of life, liberty, and property and the preservation of the public peace and order in every part, division, and subdivision of the state, is a governmental duty which devolves upon the state and not upon its municipalities any further than the state in its sovereignty may see fit to impose upon or delegate it to the municipalities. The right to establish the peace and order of society is an inherent attribute of government, whatever its form, and is coextensive with the geographical limits thereof, and touching every part of its territory." (State ex rel. v. Mason—153 Mo. 23.)

[2] In State ex rel. v. Jost, 265 Mo. 51, the Court observed that "If the state has the mere control of the police body, with the power left in the municipality to starve the police force to death by refusing to appropriate funds for its support, then there can be no metropolitan police force."

The experiment with police boards has almost universally failed. The reasons for this failure are sufficiently apparent. Successful management of a police department requires specialized knowledge and experience, clearly defined responsibility for the results secured, and a tenure of sufficient length to work out and consolidate a vigorous administrative policy. All three of these features have been lacking in the police departments here under review. Even in St. Louis, where there has been a gradual though irregular improvement in the past ten or fifteen years, the police board has ordinarily been composed of men who have had no prior experience in police administration, and who almost invariably have retired from the office upon the expiration of the governor's term. In Kansas City, the tenure of police commissioners has averaged only eighteen months, and the system of overlapping terms employed in St. Joseph effects the change of a majority of the board every two years. Improvement in police service will be difficult so long as it is operated by men, who, however capable and experienced they may be in other fields, are clearly tyros in police administration.

The Effect of State Control.

Another criticism of the present system is that it has failed to eliminate political considerations from police management. A number of the commissioners now in office are quite acutely aware of this. A commissioner in one of the cities here under examination expressed the opinion that some method should be found for eliminating politics in the selection, promotion, and discipline of policemen. When reminded that he himself was in the best strategic position for achieving that end, he exclaimed, "How am I going to avoid politics in the police department? *I am in politics!*"

So the whole question eventually reverts to the responsibility which is imposed upon the governor and senate in the selection of commissioners. The difficulty here is that these state authorities are so remote from the field of action that even the most deplorable conditions in the metropolitan police departments are far from being considered by them as vital matters. If the police service of St. Joseph, for example, were to break down completely, or if the force were to be corrupted to such an extent as to constitute a public scandal, it would be of far more concern to the people of the city than to the state at large or the state authorities. Yet the city would be powerless to effect any change in conditions.

Another argument against state control in Missouri rests upon the fact that it has not produced effective police administration. The mere fact that the St. Louis department at the present moment is probably functioning better than at any time within recent years is no indication that this condition will continue. Kansas City and St. Joseph show few signs of improvement, and past experience indicates that with the next state election the whole administrative scheme now painfully being devised in St. Louis will probably be ruthlessly tossed aside and a new and inexperienced police regime inaugurated.

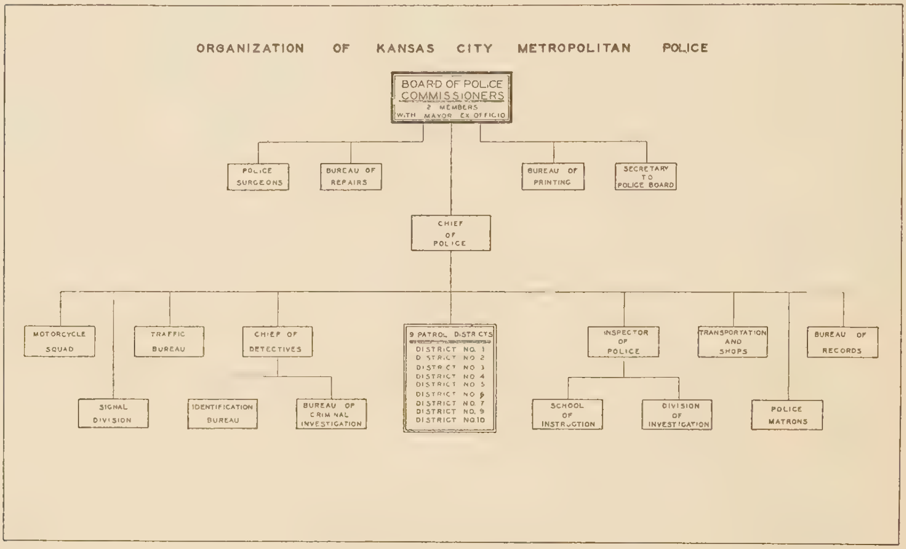
The sections which follow therefore have a two-fold significance. They bear not only upon the suitability of the various methods employed, but also upon the degree to which existing plans for police control have served to produce satisfactory results. Final judgment should be rendered in the light of the facts hereafter adduced.

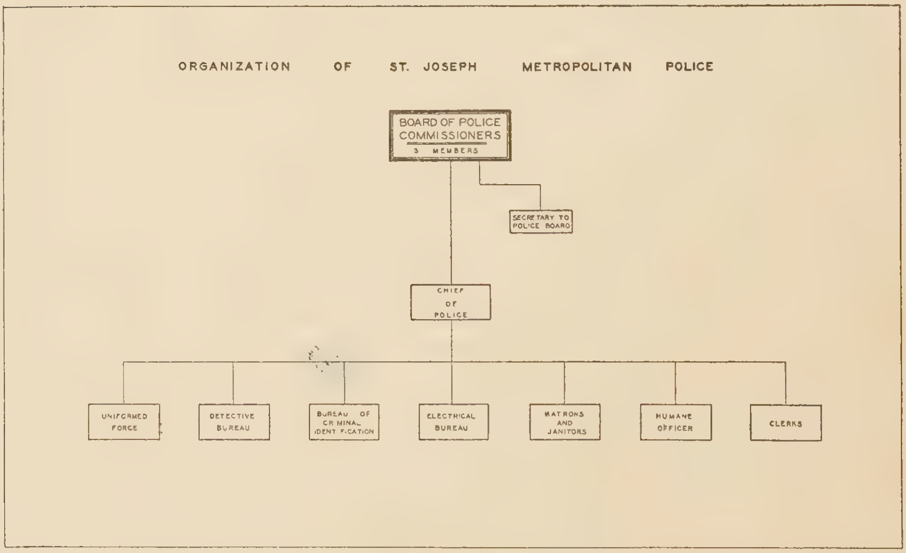
Departmental Organization.

With the gradual extension of the scope of police duty, a considerable degree of specialization has been developed. New activities with especially trained personnel are often constituted as separate bureaus and divisions. There is a continuing danger, therefore, that these new entities will be permitted to develop independently without that close supervision upon which administration largely depends.

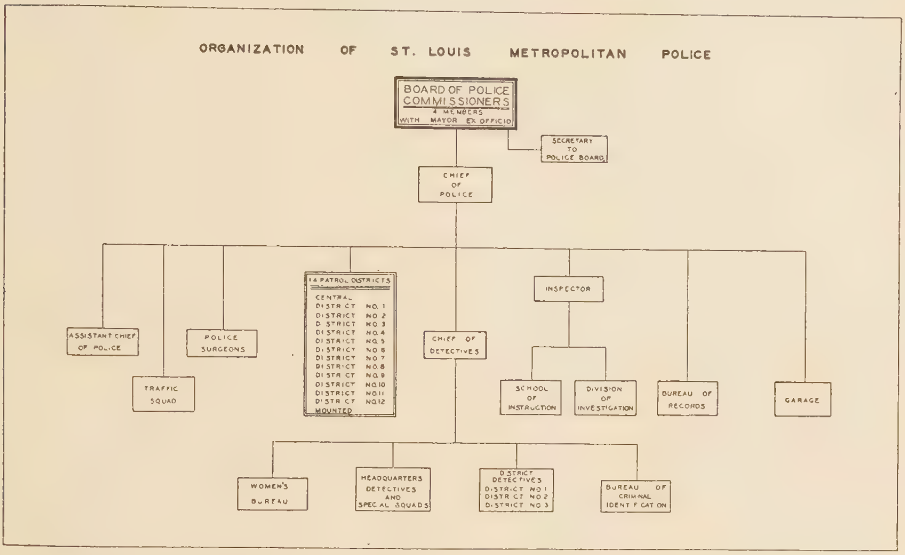
The organization charts appearing herewith emphasize the need for a closer articulation of the functions of these police forces. In Kansas City there are no less than twenty-one bureaus, divisions, districts, squads, and other units, which are directly responsible either to the chief of police or to the board of commissioners. The burden of coordinating the multiform activities which these units represent thereby becomes so heavy that close supervision is impossible. The system breaks down of its own weight. In some respects the charts fail to show the full extent of this centralization. Thus, individual members of the Kansas City motorcycle squad report directly to the chief of police on their daily activities and receive their orders directly from him. If the weather renders city pavements unsafe for the operation of motorcycles, the members of the squad, one by one, present themselves to the chief and receive an assignment to other duty. Such procedure might prove feasible in a smaller city like St. Joseph, but it is fatal to thoroughgoing administration in Kansas City, where subordinate units have been increased in number without regard to their relation to the supervisory authority. The situation is somewhat better in St. Louis, despite the larger number of police districts.

If the activities of these police forces are closely analyzed, it will be found that they may be grouped under a small number of division chiefs. Instead of twenty or more distinct units, the agencies directly responsible to the chief may be reduced to five or six: the uniformed force; the division of criminal investigation and identification; the division of records; the services of transportation, communication and




ORGANIZATION OF ST. JOSEPH METROPOLITAN POLICE
BOARD OF POLICE COMMISSIONERS 3 MEMBERS
SECRETARY TO POLICE BOARD
CHIEF OF POLICE
UNIFORMED FORCE
DETECTIVE BUREAU
BUREAU OF CRIMINAL IDENTIFICATION
ELECTRICAL BUREAU
MATRONS AND JANITORS
HUMANE OFFICER
CLERKS

supply; the police inspector who also directs the school of instruction; and police surgeons. It will be noted that under this scheme the uniformed force is provided with a division head responsible to the chief for the operations of the units placed under his command.



The results secured from such reorganization would prove large when compared with the ease and simplicity with which they might be put into effect. For the chief of police cannot become involved in adjusting the complex interrelation of daily activities without surrendering to routine in the end. When that surrender takes place the chief ceases to be chief in fact and becomes merely a cog in the machine.

Further down in the official hierarchy the number of subordinate units may be materially increased until, at the very bottom where the units to be supervised are not groups but individuals, they may reach a considerable number. But at the top, the lines of authority should converge upon a mere half dozen men who report directly to the administrative head. The latter is then left free to experiment and test, to adapt and to apply the various means at his disposal to a given end. Intelligent leadership may thereby be made effective.

The Management of Personnel

Probably the fairest test to which the metropolitan police boards could be subjected relates to their administration of personnel. The statutes of Missouri fix full responsibility in such matters squarely with the boards of police commissioners. They are given virtually unrestricted control of the selection of recruits, of training for police duty, the policy to be followed with respect to promotions, disciplinary action and reinstatements. In this they have been more fortunate than many police authorities in the United States. There has been no confusion of responsibility through the checks and balances of civil service control. These police boards have had an opportunity to establish standards of personnel administration which are in accord with the conditions of police duty. Yet that opportunity has been ignored and neglected to such extent that the efficiency of the several police departments has been seriously impaired.

Police service in Kansas City and St. Joseph represents little more than casual employment for the rank and file. Political considerations often control both appointments and dismissals, with the result that relatively few members of these forces have enjoyed more than five years of continuous tenure. The situation in St. Joseph is indicated in the following table:

Years of Continuous Service	Patrolmen and Chauffeurs	Corporals, Sergeants, and Captains
Less than two years' service	33 per cent	30 per cent
Less than three years' service	57 " "	40 " "
Less than five years' service	73 " "	70 " "

The condition of the Kansas City force is almost precisely similar, only 27 per cent of the force having enjoyed a continuous service of more than five years. One third of the total personnel has been separated from the service one or more times. There are many cases of policemen who have been on the force less than half of the time since their appointment; both officers and men who have been separated from the service at an average of once every two years.

Again and again the statutory provisions which permit the dismissal of policemen without trial as a retrenchment measure have been used for partisan purposes. In St. Joseph the wholesale dismissals ordered upon grounds of economy on May 22, 1922, and May 15, 1923, were immediately followed by the appointment of new and untried patrolmen. In 1921, the Kansas City board effected the wholesale dismissal of about 350 men, and largely, it would appear, for partisan reasons. In the course of that year alone over six hundred men were successively recruited to fill the places thus vacated. It is a record probably without parallel in the recent annals of any American police department.

The Selection of Recruits.

The primary qualifications for police recruits are established by law. It is provided that the applicant must be a citizen of the

United States, able to read and write in English, possess ordinary physical strength and courage, and be of good character. Although these four requirements represent the effective limits of statutory regulation, the police boards must supplement them with additional tests of qualification if satisfactory raw material is to be secured. Yet in Kansas City and St. Joseph, there is little or no pretense of careful elimination of the unfit. Political affiliation and endorsement are given great weight in both of these cities; a voting residence in the city is therefore introduced as a formal requirement. No blood test is included in the physical examination and there are no fixed standards of height and weight. That physical fitness is viewed as of minor importance is indicated by the fact that both the Kansas City and St. Joseph authorities persistently accept recruits above the age of forty. It is inevitable that the personnel thus secured should be characterized by an unduly large proportion of the shiftless, the unemployed, and the unemployable. A number have been appointed whose ages exceeded fifty years. When it is considered that these had had no police training or experience, the conclusion is inevitable that they are practically without value to the department.[1]

As with physical constitution so it is in the matter of character. This highly important element in the qualification of a police officer is viewed as a mere formal matter. Even so serious a question as the police record of an applicant is either neglected or given no weight. The following example is directly in point:

ARREST RECORD OF H.—

Date	*Charge and Disposition*
June 21, 1913	Selling liquor without a license; discharged.
April 21, 1915	Disturbing the peace; discharged.
March 2, 1917	Disturbing the peace; discharged.
April 26, 1917	Disturbing the peace; released.
October 14, 1917	Frequenting assignation house; no recorded disposition.
April 1, 1918	Disturbing the peace; fined $5.00.
September 30, 1919	Robbery suspect; released.
November 7, 1919	Larceny suspect; released.

On April 2, 1920, this "police character" was appointed a probationary patrolman. He was dropped from the force in July of the same year, while under charges, and reinstated by the police board on April 1, 1923.

It should not be necessary to establish the proposition that good character is probably the most important element in the preliminary qualification of a policeman. Not only is he subjected to the temptations and corrupting influences necessarily incident to the performance of police duty, which are of such nature as severely to test the moral fibre of any man, but he also is called upon to enforce laws and ordinances establishing a certain standard of personal and social conduct. If the policeman is to be a reliable public agent, he must be in general accord with the policy which such laws represent. The best indication of this is the applicant's own past record in the community. It is a matter which should be affirmatively established by the most searching inquiry among not only former employers, but among neighbors and associates also. If the applicant proves to be the boon companion of disorderly elements, there is a strong presumption that he is unfitted for police duty. Yet there has been so little appreciation of these facts in Kansas City that the investigation of applicants there has been turned over to a commercial credit agency which bears no public responsibility whatever.

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[1] Insistence upon youth in recruiting policemen is found wherever effective departments are maintained. This is especially true of London, New York, Boston and Detroit.

Selection of Recruits in St. Louis.

Current practice in St. Louis stands in striking contrast with most of this. A definite procedure is established for the selection of recruits which should commend itself to the attention of the Kansas City and St. Joseph police boards.

A candidate for appointment as probationary patrolman is required to meet the elementary requirements before an application blank is issued to him. He must qualify as to minimum height and weight standards and be not less than 22 nor more than 32 years of age. At the same time the candidate is also obliged to present evidence that he is a registered voter of St. Louis. While this practice is subject to the criticism that it unnecessarily narrows the field of eligibles, the investigation did not indicate that the present board is using it as an aid to partisan selection. In fact, this requirement of a voting residence in the city originated as a device for resisting the pressure brought by certain rural legislators to secure police appointments in St. Louis for their friends and supporters.

Shortly after the applications are filed, candidates are called before the police board for a personal interview. The purpose here is to form a basis for judgment on matters which are not subject to exact measurement. In the course of a brief examination the board forms an opinion of the candidate's mental alertness and of his personal qualities as indicated by speech, action, poise, appearance, and the like. By this method men who clearly are not qualified for the special demands of police duty are eliminated at once. This is followed by the character investigation, which is conducted by the police inspector's force of special officers, and covers the period represented by the past ten years. The physical examination by police surgeons is then made, and the Wasserman blood test applied. A written examination concludes the process, with tests of the candidate's ability to read and write legibly, his grasp of the elements of arithmetic, his knowledge of local geography and the location of prominent buildings, together with a measurement of his fund of general information, chiefly of a civic nature. That the general effect of these successive tests, as now administered, has been one of vigorous elimination is indicated by the fact that out of 453 applicants examined during July and August, 1925, only 44 were declared eligible for appointment. This represents a very much higher rate of elimination than that which prevailed under some former administrations. If those rejected in preliminary tests of height, weight, age and residence were here included, the disparity would be even greater. The following table indicates the rate of elimination during each stage of the examination process:

Successive Tests	*Per Cent Eliminated*
Personal interview by police board	76.2
Character investigation	.9
Physical examination	48.5
Mental examination	6.0
Wasserman blood test	4.4

The low proportion of eliminations on character and mental tests is due not to any fault in procedure or method but to an unwarranted generosity in the system of grading. The records show that applicants who have been convicted of misdemeanors, or arrested for felonies, are occasionally accepted. Although the metropolitan police act bars only those who have been convicted of a penitentiary offense, the police authorities must apply a far more rigid rule if the force is to be composed of men to whom a large and almost unregulated discretion is entrusted. The written examination, likewise, is so generously graded as to deprive the percentage marks of much of their significance.

Owing partly to the advanced rate of compensation now allowed to policemen in St. Louis, and partly to the professional attitude which the present administration has assumed, the force is recruiting applicants who are superior to those appointed in Kansas City and St. Joseph. The selective process will continue to be seriously defective, however, until the management of these character and mental examinations is placed upon a proper basis.

In Kansas City and St. Joseph, on the other hand, the few inadequate standards for admission to the force have seldom received any serious attention. Brief and sporadic efforts have been made in Kansas City to check up on the police records of applicants, but chief reliance has been placed upon the recommendations of political sponsors. It is admitted that laxity in this matter has resulted in the discovery that various members of the police force had damaging police records in the files of the very force of which they are now members. No scheme of procedure, no ingenious plan, and no device can protect the police department from the results of such negligence. But if an earnest effort to eliminate unsuitable candidates is made, a material improvement in the character examination in all three cities will be effected by tracing arrest records with the aid of applicants' fingerprints.

Tenure of Superior Officers.

The chief of police represents the pivot upon which the entire police force turns. His is the highest full-time office in the department. Experience has demonstrated that although a new board of police commissioners may show special interest and activity for a time, it is not long before the chief, as technical head, is left in charge of departmental affairs, subject only to occasional interference by the board. If under these conditions the chief of police and his immediate aides were given an opportunity to master the technique of administration, the system of board control might not constitute an important question. The record shows, however, that the chief of police seldom enjoys a tenure of greater length than that of the members of the board which he serves. St. Joseph has had three chiefs of police in the past four years. Kansas City has had four chiefs and two acting chiefs in a like period. Although practice in St. Louis has been somewhat better than either of these, there is a disposition for each police board to choose a new chief. Moreover, recent St. Louis boards have made extensive changes throughout the superior ranks and grades immediately after their accession to office. During its first month of control in 1921, the board in a single week "broke" the assistant chief of police, the chief of detectives, the police inspector, and four captains. Still further changes followed the reorganization of the board in 1922. Similarly, the board which took office on April 1, 1925, made new appointments to the offices of chief of police, chief of detectives, assistant chief of detectives and police inspector. The situation in Kansas City and St. Joseph is similar. No matter how excellent the past record of the incumbent may be and no matter how successful in the performance of his duties, if the board desires to promote a favored member of the force and there are no existing vacancies, the experienced officer is compelled to make way. Two contrasting illustrations are directly in point. There is the case of an officer of high rank, with twenty years of continuous service, and seven official commendations for superior police work, who was reduced three times in four years; on the other hand, there is the case of a young patrolman, of but sixteen months' standing, who received three promotions in slightly more than a year. Examples of a similar nature might be multiplied at considerable length. In the course of eight years one policeman was dropped and reinstated four times, dismissed once after trial on charges, and then received two rapid promotions in less than a year. Another officer, with sixteen years of continuous service to his credit, finally worked his way to the rank of Captain. Since 1912, however, he has been dropped four times and as often reinstated to subordinate rank.

The effect which this spectacle has had upon the rank and file, as well as upon the efficiency of the force as a working mechanism, requires no demonstration. Unduly rapid advancement is prevented by the St. Louis statute which sets up adequate minimum service requirements as prerequisites to promotion. But whatever the provision of law may be, the police boards must assume full responsibility for the experience and mental qualifications of their appointees.

It is not contended that some changes did not operate "for the good of the service." In a few instances definite improvement resulted. But the police boards of both Kansas City and St. Joseph have appointed men to commissioned rank who have had no police training, and in all three cities the police department frequently has been directed and supervised by men who were unprepared for their new tasks and responsibilities. Before a given set of officers has had an opportunity to get fairly started, they have been forced out to make way for others equally inexperienced. They are in office today and out tomorrow, leaving behind them little or no impression on the administration of the department to mark their brief incumbency. In this fact alone lies adequate explanation for the retarded development of the police forces of St. Louis, Kansas City and St. Joseph.

Disciplinary Action and Reinstatements.

Reference has already been made to the casual employment represented by police service in Kansas City and St. Joseph. A considerable portion of both of these forces has at one time or another been dropped or dismissed, and then reinstated at a later date. There is another aspect to this question of reinstatements which deserves attention, because the matter goes deep into the heart of the discipline which is maintained, and occasionally represents a very large part of the selective process.

The statutes provide various means for dispensing with the services of policemen. During the probationary period a member of the force may be dropped from the service without stated cause. With the expiration of probation, however, formal charges and a hearing are prescribed for all disciplinary cases. But inasmuch as the police boards are all permitted to reduce their respective forces as a matter of economy and retrenchment, the requirements of formal trial are easily evaded. The Kansas City and St. Joseph statutes seem actually to contemplate political removals. In the case of the former, patrolmen are originally appointed for a three-year term. During this period they may not be removed except after trial or upon grounds of retrenchment. When the appointment lapses, however, service is terminated unless a permanent appointment is made at that time. In St. Joseph, the case is even stronger. Patrolmen are appointed for successive three-year terms and officers of commissioned grade for one year only. In short, the statutes regulating these two forces are so framed as to make a heavy personnel turn-over practically certain. Each board is left free to undo the work of its predecessor and to reward its own partisan supporters.

The available service records of St. Louis, Kansas City, and St. Joseph clearly indicate the effects of shifting standards. Particularly within recent years there has been a marked disposition to reinstate policemen who have proved their incapacity for police duty. A few examples from the records of each force will serve to indicate the extent and gravity of this condition:

Record of C.— (*St. Louis*)

June 18, 1907........	Appointed probationary patrolman.
June 18, 1908........	Promoted to patrolman.
December 31, 1909...	Charged with being absent from his beat, out of uniform, and conduct unbecoming an officer. Found guilty and reprimanded.
March 4, 1910.......	Charged with failure to patrol beat and neglect of duty; no penalty.
August 22, 1911......	Charged with disobedience of orders. Found guilty, fined $50.00 "*and cautioned for the last time.*"
October 6, 1916......	Charged with wilful failure to report for duty. Plead guilty and fined $10.00.
March 12, 1917......	Charged with abuse of authority. Dismissed from the force.
April 1, 1923........	Reinstated.

Record of G.— (*Kansas City*)

April 11, 1921.......	Appointed.
June 9, 1924.........	"Caught in a 'shake-down'." Dropped.
November 26, 1924...	Reinstated.

Record of W.— (*St. Joseph*)

..........1907......	Appointed.
..........1908......	Appointment lapsed.
..........1915......	Re-appointed.
April 20, 1917.......	Charged with associating with prostitutes. Dismissed from the force.
October 23, 1917.....	Reinstated.

Record of A.— (*Kansas City*)

August 11, 1909......	Appointed probationary patrolman.
May 1, 1914.........	Dropped.
November 26, 1917...	Reinstated.
March 4, 1918.......	Resigned.
February 13, 1922....	Reinstated.
May 23, 1922........	Dropped; charged with conduct unbecoming an officer.
April 8, 1925........	Reinstated.

The case of the last-named officer represented only five years of service out of a total of sixteen.

The following brief record, which covers a period of but little over five years, derives additional interest from the fact that it presents the contrasting policies of two successive police boards:

Record of H.— (St. Louis)

January 22, 1920	Charged with misconduct. Filed. No action.
June 27, 1921	Anonymous complaint. Filed. No action.
September 18, 1922	Anonymous complaint against conduct. Wife charged with operating disorderly house. Filed. No action.
April 29, 1923	Resigned, "effective immediately."
August 31, 1923	Applied to be reinstated. Denied by board, September 11, 1923.
October 12, 1923	Applied to be reinstated. Ordered reinstated, October 16, 1923.
November 26, 1923	Resigned, "effective at once."
February 14, 1924	Applied to be reinstated. Denied by board, February 19, 1924.
June 3, 1924	Applied to be reinstated. Ordered reinstated, June 3, 1924.
August 10, 1925	Recommended for appointment to rank of patrolman by his commanding officer.
August 13, 1925	Foregoing record reviewed by Chief of Police. Recommended that he be dropped.
August 14, 1925	Dropped from the rolls

In the last case the department was purged of an undesirable member by prompt and vigorous administrative action. The history of all three forces indicates, however, that the officers disciplined under one board are very likely to be rewarded by the next. The record of one officer shows that during the eleven years following his appointment he served only three years and ten months. He was twice tried on serious charges and found guilty; twice separated from the force for other causes and each time reinstated. Upon a change in the political control of the board this officer received three promotions which carried him to the highest rank in the uniformed force, and all within three brief years.

Consistent adherence to such a policy has the most far-reaching effects upon recruiting. If each quota of recruits contains a large number of men who have previously been dismissed from the force, then survival of the old sordid traditions is assured. Given the best of raw material, it may confidently be predicted that some will fail to meet the test of actual service. But in these police departments few efforts are made at a rigorous selection of new men, or a firm exclusion of those who have time and time again proved their unfitness. Between 1921 and 1924, one-fourth of the recruits to the St. Louis force represented reinstatements. At the time of the survey in Kansas City fully one-half of the candidates for appointment had seen previous service on the force. During the past three years reinstatements in the St. Louis department have far exceeded the number dismissed for stated cause, and have equalled the total number dismissed, dropped during the probationary period, and resigned under charges. Within recent years, therefore, the effects of the process of elimination have been almost entirely offset by an extreme liberality in dealing with undesirables.

Everywhere the bold fact stands out that these police forces are threshing over the same old chaff time and time again. The careless selection of the new and fresh supply of recruits only serves to aggravate a situation which is already acute. For this condition, and for the corrupt practices and degradation which are intimately associated with it, the police boards must bear full responsibility.

While partisan pressure constitutes the most complete explanation for such negligent methods, there is also the fact that the police commissioners are generally inexperienced in police administration and do not appreciate the weight and the far-reaching importance of many decisions which they make. Their disciplinary system has often been marked by an undue clemency. Offenders who were "profoundly cautioned" and "warned for the last time" have known from past experience that these phrases had no real meaning or threat behind them, and that other and still more solemn admonitions might be expected before severe disciplinary methods were applied. And even though dismissal were meted out at last, there was no reason for despair. If a first request for reinstatement were denied, the second attempt might be more successful. Always there was the double possibility of a change of control or of a sudden or ultimate weakening at headquarters.

The following excerpt from the record of hearings held by the St. Louis board on December 30, 1924, could not possibly have had the impressive effect which was intended for it:

> Commissioner: It seems in view of the fact that you were on the verge of establishing a real credit for yourself in the department, you would have gone out and gotten intoxicated. You had to be reprimanded when Mr. McPheeters was president of the board.
>
> Officer X: I would rather been killed by a burglar...............
>
> Commissioner: What this board can't understand when you men go out and do things you well know the penalty, and after you get in that fix you send your family and friends to plead for you. It is not fair to your family, and it is not fair to the eighteen or nineteen hundred men; the board is human. If you are all that you claim you are, you ought to realize that fact. You ought not to put this board in that position.
>
> Officer X: I beg the board to be lenient.......................
>
> Commissioner: In consideration of your family, officer, and your financial condition, the board is going to give you another opportunity...

There it was, for all to hear and to see; the board clearly did not mean business. It did not realize when it armed a policeman with a club and a gun, and clothed him with a uniform and a badge of authority, and sent him off into the night to walk his beat where close supervision was impossible, that it thereby assumed a responsibility for that policeman's acts which could only be met by the most consistent and vigorous discipline. The police commissioners of these cities have been too much involved in partisan matters, and too little informed of the meaning of their public functions, to apprehend the fundamental importance of selection and discipline to successful police administration.

In the light of these facts, it is recommended that the metropolitan police acts be so amended as to provide that no member of the several forces who has been dismissed after trial, dropped during probation, or who has resigned while charges are pending against him, shall be eligible to reappointment or reinstatement. While these measures may appear to be unduly harsh, there are many precedents for such action, and experience has demonstrated that the abuse of discretion customarily practiced by the police boards of St. Louis, Kansas City and St. Joseph, can be controlled only in this stern manner.

Training.

The necessity for providing police recruits with formal instruction in the nature of police duties and the manner of their performance is no longer subject-matter for controversy. Police departments now vie with each other in extending and improving the curricula offered by their training schools. It is not too much to say that the establishment of police schools has constituted the greatest single improvement inaugurated by American police systems in the last twenty years. And yet, in spite of the general tendency toward improvement, the instruction of recruits in these Missouri cities has been distinctly retarded in its development.

It is not necessary to search very deeply for a reason. As already indicated, police service in Kansas City and St. Joseph has seldom been viewed as anything more than casual employment. When a policeman is appointed he does not thereby enter upon a calling which is deemed to require any special qualifications or aptitude. No serious effort is made, therefore, to prepare the recruit for situations which might require technical skill. In fact, the personnel turn-over has at times been so rapid that any program of systematic training has been clearly out of the question.

Owing to the relatively small size of its force, the St. Joseph police department does not maintain any school or other formal method of specific training. Within recent years, however, both St. Louis and Kansas City have set up what they term "schools of instruction." In Kansas City recruits are given six hours of instruction daily for two weeks. Calisthenics, close-order drill and small-arms firing are stressed during this brief period, with the criminal code and the law of arrest receiving secondary consideration. The school seems never to have been viewed as a constructive factor, and has received but little attention from the administrative heads. Its operation has been irregular and sporadic.

St. Louis, on the other hand, maintains a police school in continuous session. The course of instruction, including daily patrols, covers an entire month. The quality of the instruction in police duties, however, is not of a high order. It is based upon a catechism which the recruit is required to memorize *verbatim*. This "schooling" which is little more than a repetition of the names and nature of offenses fails to satisfy the demands of police training. This fact is thoroughly appreciated by the present administration and plans are now under way which will extend the course of instruction to three months, including daily patrol duty. If satisfactory instructors can then be developed, the foundations will have been laid for a practical and serviceable police school which will contribute largely to the usefulness of the force as an agency of law-enforcement.

The size of the St. Joseph force does not warrant the maintenance of a separate and specialized police school, but the department can and should provide for the periodic instruction of all members recently added to the service. It is also recommended that all three cities provide brief review courses for experienced officers and men, in order that recruits may not prove themselves better grounded in the principles and methods of their calling than their official superiors.

Conclusion.

It must be admitted, however, that the success of any program of instruction will depend in large measure upon the standards which are maintained for the selection, promotion, and discipline of the rank and file. This is fundamental not only to the matter of training, but also to the larger question of the effectiveness of the police force as a whole.

The Kansas City department is riddled with politics. There is dissatisfaction and resentment in the ranks because experience has taught them that their tenure and promotion do not depend upon the quality of the police services they may render. The situation in St. Joseph is not materially better, and while there are many and gratifying signs of improvement in St. Louis, there is nothing to indicate that present gains will be consolidated under the next succeeding board. The conclusion seems inescapable that some definite and radical break with the past is necessary if these forces are to be able to cope with the crime problems which confront them.

The manner and extent of such departures from present methods are reserved for later consideration.

Uniformed Patrol

The uniformed force of a police department is chiefly concerned with matters of patrol. This elementary duty constitutes far the largest portion of police service. A major part of the police budget is devoted to it. When satisfactorily performed, it contributes more to the public peace and safety than any other kind of police activity. Its purpose is to guard persons and property, and by a show of force to discourage the commission of offenses.

In spite of the fundamental nature of patrol, and of the great cost involved, American police departments have been slow to adapt their patrol systems to changing needs. The monotonous nature of the work as compared with criminal investigation or identification, has served to divert attention to these more highly specialized activities. As a result, emphasis has come to be placed upon apprehension of the offender rather than upon prevention of the offense.

The three cities here under review provide examples of the various attitudes which have been assumed in dealing with the major question of uniformed patrol. All of them have, to a considerable degree, felt the effect of changed conditions. The universal use of the automobile has drawn off large numbers of patrolmen to traffic duty and at the same time enormously complicated the problems with which patrol must deal. Observation patrol has become less and less efficient because the relative number of men available for this duty has steadily declined, and except for the addition of motorized facilities, few efforts have been made to reorganize it in the light of new conditions.

The Distribution of the Patrol Force.

Kansas City has attempted and accomplished less in this respect than the other two cities. Although its population has doubled in the past twenty years, its scheme of patrol distribution has remained practically the same. The most extensive changes in the character of particular districts have brought no revision of district boundaries and beat lines. Due to the progressive diversion of the uniformed force to traffic and special duty, about half of the foot patrol beats are now uncovered. Many platoons have no duty sergeants, with the result that a considerable part of the force works almost free of supervision. Improved means of communication with patrols, through a system of call lights and gongs, have not been provided. Although the force is clearly undermanned, it is still distributed about equally throughout the entire twenty-four hours of each day.

The situation in St. Louis is materially better. Uniformed patrols cover the entire city even though the beats are in some cases too large for effective work. There is an adequate quota of duty sergeants whose work is supplemented by a widely distributed police telephone and call-light system. But the number of police districts is unnecessarily large and such efforts as have been made for intensive patrol during peak hours have fallen short of their objective.

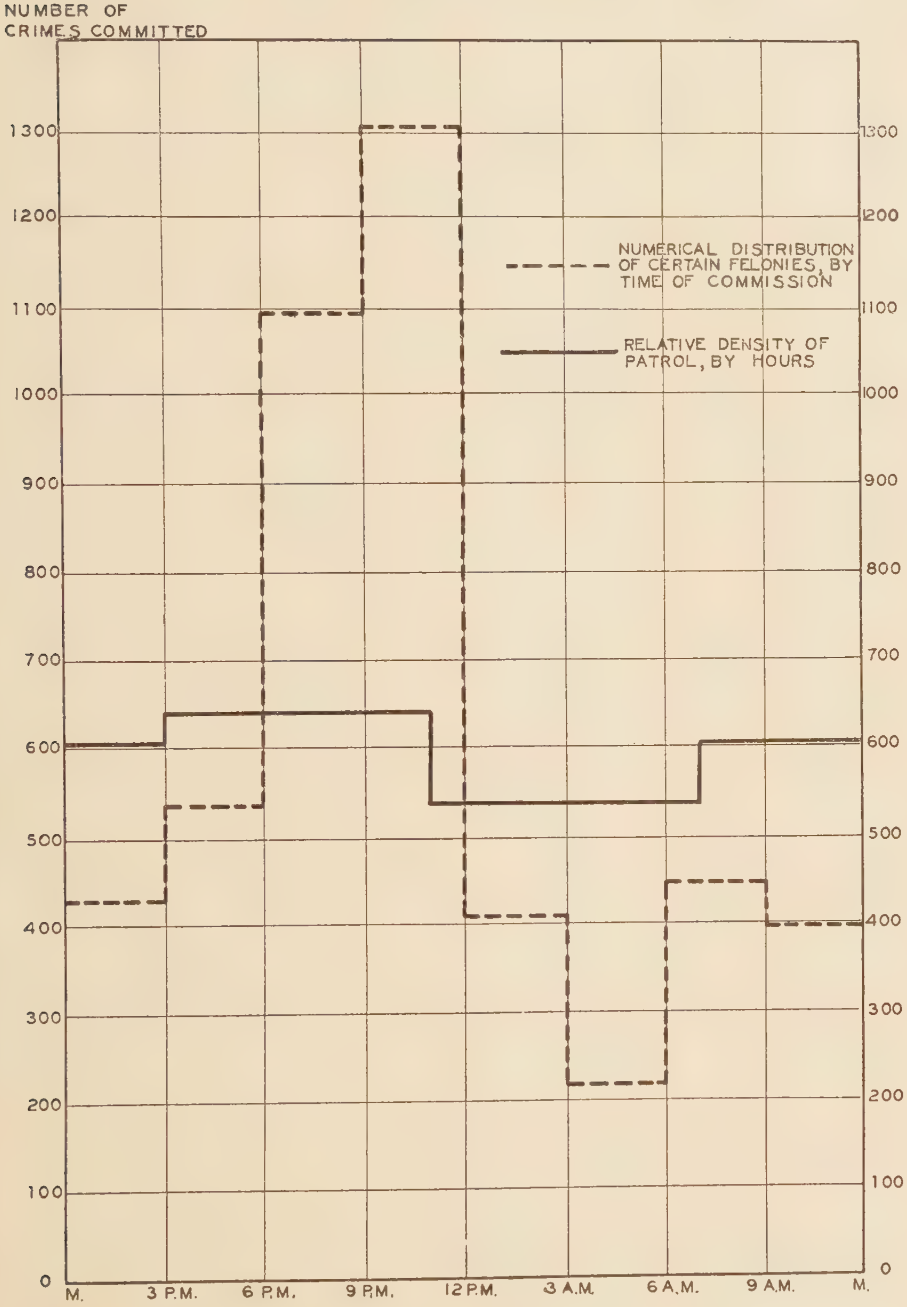
The downtown police districts average only about one-half of a square mile in area. Four district stations are located within a radius of one mile of the central district headquarters. By contrast with this, it is to be noted that the most remote portion of the mounted district is five miles distant from its station in Forest Park, and that districts No. 6 and No. 12 present a condition almost equally striking.

District stations exist chiefly as convenient means for distributing the patrol force and responding to emergency calls. The personnel required to man them together with building operation and maintenance costs, render them highly expensive adjuncts. Years ago small police districts were probably necessary, but with the police signalling systems which can now be secured, with the department well motorized, and a multitude of public carriers available for the quick distribution of the patrol force, there is no longer an adequate reason why the consolidation of districts should not be undertaken in the area surrounding headquarters.

The graphic chart presented herewith portrays on the basis of available statistics the distribution of the patrol force with reference to the hours when murders, burglaries, robberies, and auto thefts are committed. It indicates that while there is a very marked preponderance in the number of these offenses between 6.00 P. M. and midnight, the density of patrol has not been made to accommodate itself to this condition. It is interesting to note that the metropolitan police act governing the St. Louis department provides that the force shall be divided "as equally as may be" into three platoons. The officers of the force know from experience that the policy declared by this act is fundamentally unsound from the standpoint of

ST. LOUIS

RELATIVE DENSITY OF PATROL COMPARED WITH DISTRIBUTION OF FELONIES



practical police administration. Although an attempt has been made to fit the density of patrol into the daily crime curve by instituting a small fourth platoon with a divided tour of duty, the chart shows that the situation has not yet been met.

Effect of Statutory Restrictions.

The provisions of the statute hardly serve to relieve the administrative heads of all responsibility in the matter. The same act provides that there shall be twelve police districts. The number has been increased to fourteen. Moreover, the St. Joseph statute also contains a clause requiring three approximately equal platoons which is identical in its legal effect with that of St. Louis. Yet the St. Joseph force is so distributed that two-thirds of the foot patrolmen are on duty from 4.00 P. M. until midnight, and one-third from that time until 8.00 A. M. In other words, all men available are thrown into the evening and night hours when demands are heaviest and the opportunities for observation most limited. During the morning and early afternoon hours the city is protected only by the traffic and motorcycle squads, and the reserves maintained at headquarters for emergency duty. Of the three cities, the crime problem of St. Joseph is far the least serious in its nature. Yet this question of patrol has been met there not in the rather mincing manner employed in St. Louis, but directly and unequivocally. The declared inadequacy of the St. Joseph police department rests solely and simply upon the fact that members of the patrol force are assigned to their beats in pairs. This practice, once in general use, has been almost universally discarded from coast to coast. If single patrols were adopted for St. Joseph, the alleged inadequacy of the force would be overcome. It would then be possible to provide observation patrol throughout the daylight and night hours, with extra quotas on duty during those periods when intensive patrols are required.

The practical effect of the statutory regulation of administrative questions provides eloquent commentary upon the undesirability of such restrictions. As indicated in an earlier section, there are natural limits to legislative control over administration.

Immediate Patrol Requirements.

All of the evidence indicates that so far as the police are concerned, the largest single problem in the crime situations of these cities rests squarely upon the question of uniformed patrol. The acute conditions now prevailing in Kansas City appear to be very largely due to the progressive dimunition of the patrol force. District after district has been deprived of a part of its effective personnel in order to establish large numbers of special details. Many of the men so detached are relieved of immediate supervision, and in the course of time are likely to become virtual free-lance police officers. While this process of patrol dilution has been going on, the multiform activities of commercialized vice have been permitted to develop unmolested. At the present time, Kansas City's "tenderloin" section is the nucleus and headquarters for much of the crime of the city. Convicts who are discharged from nearby state and federal penitentiaries gravitate to it. The most effective means for combatting the elements which use it as a base of operations are to be found in stern repressive measures. Intensive patrols throughout this section, both by day and by night, with short "straight-away" posts on lower Main Street and the most difficult portions of Twelfth Street, would substantially contribute to that end. Probably the only manner in which the necessary man-power can be provided for this concentration is through adoption of the following expedients. The foot patrols now maintained in quiet residential districts should be withdrawn entirely during the daylight hours, and a small number of motor patrols substituted. All patrols might be mobilized more readily, and hence rendered more effective, if an adequate signal system were installed. Considerations of expense at the present time prevent adoption of the highly developed and centralized system maintained in St. Louis, but a system of call lights on short extension lines controlled from fire houses, from office buildings where licensed watchmen are on duty, from the water tower on the outskirts of the city, and the like, might be made to provide a temporary substitute. The public telephone system would render these signal centers immediately available through police headquarters.

The district stations might be made to yield a considerable number of patrolmen now performing the light station duty which, however desirable in some instances, is not indispensable. While the present administration has accomplished much in the discontinuance of special details, it is conceded that the work is not yet completed. School crossing traffic details also have for some time been exceedingly burdensome and have diverted considerable man-power from the business of crime repression.

By these several methods a sufficient number of men might be made available to give the entire city adequate patrol service, each section according to its peculiar needs. Inflexible rules and formulae are impossible in a matter which is as broad and complex as the community itself. The precise distribution would depend upon close examination of the several districts and adaptation of the several devices and expedients to the special requirements of each. In a general way, however, the foregoing program would involve a concentration of foot patrol in the commercial, industrial, lodging house, and amusement districts, with motor patrol reserved for quiet residential areas. It would give to all parts of the city regular uniformed patrols which many sections now lack. It would adapt the method of patrol to local conditions, and result particularly in a concentration of strength in those sections where the disorderly and criminally disposed elements now congregate. With suitable support from plain clothes squads from headquarters, it should serve to increase the effectiveness of the police force as a whole.

These considerations apply with somewhat less force to St. Louis. The police department of that city provides circulating patrol to a far greater degree than is even attempted in Kansas City or St. Joseph. It is equipped with a modern signalling system which places the patrolman on a remote beat in ready communication with his superiors. Furthermore, the motorized facilities are more numerous than those ordinarily provided for police service. The present policy of the department is to pound away at the various kinds of disorderly resorts which serve as gathering places for offenders and potential offenders. In a few instances this plan seems already to have yielded gratifying results.

The fact remains that regular patrols in St. Louis are still inadequate in number. Personnel increases allowed by statute in the last seventeen years have been almost completely absorbed by the necessity for dealing with the new traffic problems. Special details to public offices and places of public assembly have also taken their toll, while the considerable number required to operate and maintain the district stations has shown a tendency to increase. At the present time, it is probable that the largest gains in available men could be secured through consolidation of police districts, and a redistribution of tours of duty in accordance with the daily crime curve.

In St. Joseph the number of foot patrols may be immediately increased 100 per cent by discontinuing the archaic double patrol system now employed.

The foregoing matters do not represent refinements of police procedure. The problem now confronting these cities would not permit refinements. They are plain, immediate necessities. The several forces are faced with the fact that under their present scheme of distribution, uniformed patrols are inadequate in number. Rising police costs render personnel increases both inexpedient and undesirable. But this survey shows that the effect of a substantial increase can be secured if outworn schemes of distribution are abandoned, and the patrol force distributed and administered not according to conditions which existed a generation ago, but in line with conditions existing today.

Special Services

The specialized services relating to criminal investigation, identification, and the protection of women and juveniles, are administered better at the present time than any other activity. The highly interesting phases of this work have served to draw official attention, with the result that the several police departments are better equipped to investigate crimes and to identify criminal characters than for the fundamental business of protecting life and property in the first instance. Although the first line of defense, represented by the patrol force, is weak, these auxiliary agencies are quite the equal of those maintained elsewhere under comparable conditions.

Criminal Investigation.

The three detective divisions show the results of intelligent organization and planning and although there have been occasional appointments of inexperienced men directly from civil life, the general average of personal capacity is well above that of the rank and file. The auto theft bureaus of St. Louis and Kansas City deserve special mention. In a period of but two or three years these agencies have developed a procedure for the recovery of stolen cars which has yielded gratifying results. The following tabular summary indicates the degree of success attained:

AUTOMOBILE THEFTS AND RECOVERIES FOR ST. LOUIS AND KANSAS CITY, 1920-1925

	St. Louis			Kansas City		
	Number Reported Stolen	Per Cent Recovered	Number Not Recovered	Number Reported Stolen	Per Cent Recovered	Number Not Recovered
1920	812	83.9	131	1,597[1]	38.1[1]	988[1]
1921	1,560	80.6	302	1,516	70.5	447
1922	1,708	85.9	241	1,240	87.8	151
1923	2,535	86.1	353	1,555	84.6	240
1924	3,440	83.6	563	1,563	83.2	263
1925	3,436	87.3	435	1,646[2]	85.7[2]	236[2]

[1] Figures for January, 1920, missing.

[2] Estimate.

It will be noted that the high ratio of recoveries in St. Louis has not served to prevent an abnormal increase both in the *number* of automobile thefts and in the *number* of unrecovered cars. Furthermore, the police departments of both cities seem to give little attention to arrests for such offenses. During the period from October 1, 1923, to October 1, 1924, warrants were issued in Kansas City in less than one-half of 1 per cent of auto-theft cases, and the record of St. Louis is not materially better.

The methods employed in the recovery of jewelry, furs, clothing, and other personal effects, from pawnshops and second hand stores, show marked diversity of practice. The Kansas City special squad which is charged with this function comprises only one third as many men as that of St. Louis, yet it supervises and controls almost twice as many pawnshops. Explanation is to be found in the fact that in both Kansas City and St. Joseph, the ordinances require proprietors of such establishments to make daily reports of all property purchased and pawned, with a detailed description thereof. In the absence of an ordinance of this nature, the energies of the St. Louis squad are exhausted in lengthy visits to each shop and the preparation of detailed descriptions which are filed at headquarters. The practical advantage of more formal regulation is so well established, however, that its adoption is urgently recommended. Experience demonstrates that it will contribute materially to the success of the police department in recovering lost and stolen property, and at the same time reduce the cost of administration.

A second subject for criticism, the correction of which also lies beyond the power of the police authorities, relates to the permanent ranks and grades now provided by statute for St. Louis and Kansas City. Selection of capable investigators has always been one of the most difficult problems of detective administration. The requirements of the work are so imponderable that no formal test or examination has thus far succeeded in weighing and measuring them. At the very best the appointing authority can only guess at individual capacity and aptitude for detective duty. The real test comes in the handling of concrete cases. Some are readily eliminated after only a few weeks' trial; others must be shifted several times to differing types of work before it can be determined whether they possess the necessary qualifications. The consensus of detective administrators is that only 10 per cent of those originally selected prove equal to all of the demands of such exacting service. In this the authorities of St. Louis and Kansas City concur. A further consideration is the fact that although detective duty lends itself more readily to corruption and abuse of authority than any other type of police work, close and intimate supervision is all but impossible. It follows from this that the chief of detectives will occasionally become convinced that a particular detective is taking advantage of the many opportunities for private gain, but will be unable to collect sufficient evidence to warrant filing formal charges.

In either case, therefore, the question is squarely raised, what shall be done with those who have failed in their practical test at detective work? Shall they be returned to the rank and file, and reassigned to patrol duty, or shall they be permitted to encumber the detective division for an indefinite period? The usual effect of existing statutes is to resolve this question in favor of the latter alternative. In St. Louis, provision is made that at least sixty-five sergeants shall do detective duty, while in Kansas City there are distinct grades of detective and detective-sergeant at enhanced pay-scales. The process of selecting detectives would be measurably improved if these clauses were repealed and detective duty handled as a matter of simple assignment from the rank and file of the force, or from the body of recruits. This need not impair the sound principle of higher compensation for detective work. It would, however, destroy the artificial distinctions now maintained, which deprive the directing authorities of that flexibility upon which good detective administration frequently depends.

The ancient rivalry between the uniformed and plain-clothes forces has a substantial basis. It arises from the fact that in a given case the patrolman is often the first to risk life and limb. With the arrival of detectives, however, he is automatically displaced. The plain-clothes operative takes command of the situation and the patrolman returns to his beat. This condition inspires a natural resentment, which sometimes leads to a series of retaliatory acts by the two branches. In the manoeuvers which follow, the public functions of these officers are lost sight of. Their energies are directed at causing each other confusion, discomfort, and discouragement.

If existing distinctions are broken down, the way will be open for the administrator freely to marshal the forces at his command for the repression of crime and the apprehension of offenders. He can then take advantage of various expedients which may be made to contribute their share to successful operation. Particularly, he may exercise his powers in securing the benefits which come from an occasional change of assignment. For when old and familiar tasks come to be performed as a matter of routine, he can by temporary reassignment break the monotony for his subordinates and perhaps thereby release hitherto unsuspected capacities. Such change of employment must come while there is still a desire for change. If this opportunity is neglected, the man in the ranks finally becomes a mere official automaton who has acquired mastery over a few devices and employs them unremittingly. Any scheme of administration which does not consciously seek to build up an alert resourcefulness among the rank and file, surrenders an opportunity for general improvement of police service for which no amount of supervision, and specialization to no matter what extent and degree, can possibly compensate.

Criminal Identification.

The criminal identification systems are satisfactorily operated. In all three cities the dactyloscopic or fingerprint system has supplanted the older Bertillon method of anthropometric measurement. This has been done despite the fact that the statutes provide that the older method shall be employed. In the case of St. Louis there is a direct and specific requirement that the police board shall establish the Bertillon system. Here again is an example of attempted legislative control which has broken down because the whole trend of development has turned in a different direction since the passage of the act. If these police departments had adhered to the archaic Bertillon system as closely as they have to the equal platoon law, they would now be able to exchange identification records with only a mere handful of other police departments. Everywhere the Bertillon is being discarded in favor of the simpler and more dependable fingerprint. The statutes have failed to recognize this fact and so the police have been forced to follow the general trend with inadequate authorization. The old statutory titles are retained in order to give an appearance that the provisions of law are being complied with. In actual fact, however, the law has been flouted. Had it been observed, the police would have been deprived of a most useful auxiliary service until amendment could be effected.

The photographic records or "rogues' galleries" of St. Louis and Kansas City have now grown to such proportions that they will require close classification if they are to be readily utilized. Kansas City is now following the example set by St. Louis in arranging photographs according to the types of offenses represented. It is recommended that this be supplemented in both cities with a classification of duplicates by facial characteristics.

In St. Louis the photograph racks have been placed in the detective squad room where they may be more readily available for inspection by operatives. Due to their removal from the immediate physical control of the identification bureau, a considerable number have been abstracted from time to time and not returned. The usefulness of a collection which has been assembled at great labor and expense is thereby impaired.

The "shadow-box" or "show-up" room, for the exhibition of police characters, which has been established in the St. Louis headquarters building, is worthy of mention as being symbolic of the manner in which the detective bureau has adopted improved methods coming to its attention.

The Protection of Women and Juveniles.

The Missouri statutes authorize the employment of policewomen, who are to possess the usual police powers and to perform such duties as the police authority may prescribe. Thus far St. Louis is the only city among those here under review, which has exercised the option thus granted. The women's bureau consists of eighteen policewomen commanded by a police lieutenant, who is directly responsible to the chief of detectives. This rather recent activity has been conservatively developed, emphasis being placed upon the utility of the bureau to the police force as a whole. The work of the bureau falls into two major classes. First and foremost is the function of making investigations and arrests in cases to which women and juveniles are parties. In this the methods employed do not materially differ from those of a detective division. A second duty consists of protective and preventive work in which there is ample scope for experimentation.

The women's bureaus established in many cities have been faced with a choice between two alternative lines of procedure. A majority have elected to organize their staffs virtually as a group of social workers, who are armed with police powers. Their aim is to build up a distinct welfare agency within the police department, which shall make case-studies of the individuals coming within their scope, and attempt to correct, in so far as possible, those social conditions which constitute recognized causes for crime. A second group, among which the St. Louis women's bureau is an outstanding example, have a more modest program. Their purpose is to supplement, rather than to improve upon, the work of social agencies. In the ordinary course of duty, the bureau from time to time becomes apprised of conditions having an intimate bearing upon the offenses with which it is directly concerned. As a measure of crime prevention it refers the matter to the public or private welfare agency especially equipped to handle the matter, while the criminal features of the case are retained and prosecuted to a conclusion.

Experience with these two methods has not as yet crystallized sufficiently to permit a positive and unqualified choice between them. But it is possible to state definitely and unequivocally that Kansas City and St. Joseph should devote some attention to the question of crime prevention. One or two capable policewomen would meet all present needs in St. Joseph. Kansas City, of course, would require a somewhat larger force of women operatives. The situation in the latter city is already so involved, however, that the creation of a new bureau would probably be inadvisable at the present time. The problem there consists in returning at the earliest possible date to the fundamentals of police duty as represented by regular and adequate patrols. When that is accomplished, and the personnel policy of the department has been restored to a sound basis, the question of organized means for crime prevention will warrant serious and favorable consideration.

CONCLUSION

A police department stands or falls, when all is said and done, not upon refinements of procedure, of equipment, or even of statutory provisions. The matter largely resolves itself into a clear-cut problem in the selection and management of man-power. The human raw material must in the first instance be such that with adequate supervision, training and discipline, a fair proportion may be fashioned into capable policemen. But given even the best of recruits, an ill-disposed or an unqualified administrator can in a few months tear down the work of years.

It is a vain and a futile business to combat graft and corruption unless the responsible authorities are themselves prepared to follow a course of honesty and fair-dealing with their subordinates. They must make it clear that if loyal and indefatigable police service is rendered, no political or other power can prevent generous reward, and that if disloyal or indifferent service is performed, nothing will be permitted to stand in the way of certain punishment. This policy, rudimentary though it is, slowly is coming to be accepted in St. Louis. In Kansas City, at the other extreme, if grasped at all, it is ignored. Yet upon its thorough adoption a large part of the effectiveness of the police force will be found to depend.

That there is no easy formula for success in police control has been demonstrated over and over again. The rules may be simple to understand, but under existing forms of organization they are most difficult to apply. The police administrator approaches his task with an easy confidence of success. He departs, in most cases, either baffled and chagrined, or convinced that however unsatisfactory his record, it is as good as could reasonably be expected. Mere good intentions unsupported by a stern but just discipline, fail to thwart the almost unlimited capacity for corruption offered by politics, vice and crime.

The methods employed must square with human nature; with its strong points and with its known weaknesses. If the governor and senate are authorized to designate local police administrators, experience demonstrates that however great the personal capacity of the latter, their tenure will be too short for them thoroughly to acquaint themselves with the nature and demands of police work. The practical necessity for vesting the police authority with the virtual power of appropriation has resulted in the appointment of partisan boards rather than a single administrative head. This diffusion of power and responsibility, which is desirable in such a quasi-legislative body, is fatal to vigorous and sound police administration. State control, therefore, effectively bars the way to any lasting improvement of police service in St. Louis, Kansas City, and St. Joseph.

Here in the United States there has been a fair degree of continuity in the service of the rank and file, but our police administrators arrive and depart with a rapidity which is kaleidoscopic in its effect. The development of police administration has thereby been greatly retarded. But in the matter of police practice and procedure, in which the policeman has had an opportunity to apply the results of long years of experience, there has been developed a body of opinion relating to crime repression and criminal investigation which receives quite general acceptance. The present state of the science of police administration on the one hand, and that of the "policeman's art" on the other, are in such striking contrast as to carry their own lesson. Until there has been secured a fair degree of permanency in the tenure of the police administrator, the development of a science of police administration is going to lag far behind practical police methods. Kansas City and St. Joseph have been provided with security of tenure neither among the rank and file nor among the administrative heads. Judging from present indications, it is unlikely that the one will be obtained without the other.

It will not be necessary to set up a kind of civil police dictator who is beyond the reach of popular control. Security of tenure might conceivably be purchased at too great a price and official incompetence protected against vigorous and responsible executive intervention. But if the administrative head is appointed without fixed term, and provision is made for his removal only after due notice of the charge and a public hearing, then adequate safeguards both for the public and for the administrator will have been provided. Neither need the precise ground of removal be restricted. It is enough if the charge and specification are clearly stated. Whatever the ground for removal, whether it relates to official acts or to those committed in a private capacity, the important point is that the removal shall be effected only after the entire matter has been sufficiently dramatized to capture and hold public attention. Complex devices only serve to confuse the popular understanding, but a simple drama consisting of complaint, answer, and final judgment will meet with no difficulty in holding public attention for the brief period required to accomplish an orderly removal.

The effect of such a scheme on the police forces here under review could not fail to work some immediate improvement. In the course of time, as the professional administrator's hands become more and more free, and the sordid traditions now surrounding these forces have lost some of their influence, the results will be more striking. With continuity of both policy and personnel, the way will be clear for gradual improvement in the essential business of protecting life and property. With intelligent leadership for their police departments, *no matter who is governor,* and consistent training and discipline for the rank and file, these Missouri cities may yet secure adequate and dependable police service. Without such leadership and preparation, all minor devices and expedients must fall short of the mark.

MAJOR FINDINGS AND RECOMMENDATIONS

General

1. Felonies have assumed grave proportions in St. Louis and Kansas City.
2. The homicide rate in Missouri cities is double the urban average for the United States.
3. State control of the metropolitan police systems has failed to provide satisfactory administration of the several police departments.
4. Political considerations have too often prevailed.
5. The internal organization of the St. Louis and Kansas City forces is characterized by an unnecessarily large number of coordinate units.

Management of Personnel

6. The personnel turnover in Kansas City and St. Joseph is so high that police service in these cities represents little more than casual employment.
7. Police recruits are carelessly selected.
8. Superior officers in all three cities are commonly replaced with each change in the composition of the several police boards.
9. There has been a marked tendency to reinstate policemen who have proved their incapacity for police duty.
10. Efforts at training recruits in the methods of the policeman's art have thus far proved ineffective.

Uniformed Patrol

11. The Kansas City patrol force has been subject to progressive diminution until it has become utterly inadequate in numbers.
12. The number of police districts and district stations in St. Louis and Kansas City is unnecessarily large.
13. The statutes require an equal distribution of patrols without regard to the special patrol requirements of certain portions of the day and night.
14. Discontinuance of the archaic system of double patrols now employed in St. Joseph is recommended.

Special Services

15. There is no ordinance in St. Louis requiring pawnbrokers and second-hand dealers to make daily reports of articles pawned and purchased.
16. In order that they might keep abreast of development in the field of criminal identification, all three police departments have violated statutes requiring employment of the outworn Bertillon system.

Recommendations Requiring Legislative Action

1. Police administration to be vested in the respective municipalities, free from state control.
2. The several police departments to be provided with a single responsible administrative head, who shall be appointed by municipal authority without fixed term, adequately compensated, and removable only after charges have been formally preferred, and a hearing granted.
3. Repeal of those portions of the several three platoon laws which require that platoons shall be approximately equal in numerical strength.
4. Repeal of the statutory provision that there shall be twelve police districts in St. Louis.
5. Repeal of the statutes which require police departments to employ the Bertillon anthropometric method as a means of criminal identification.
6. Enactment of a statute to the effect that policemen who are removed for cause, who resign while charges are pending against them, or who are dropped during probation, shall be ineligible for reappointment.

PART II

THE SHERIFF AND THE CORONER

By

RAYMOND MOLEY, Ph. D.
Department of Public Law, Columbia University
Research Director, New York State Crime Commission
Formerly Director of the Cleveland Foundation and Secretary
of the Cleveland Association for Criminal Justice

ADVISORY COMMITTEES

Sheriff

Roy F. Britton	St. Louis
S. S. Connett	Faucett
Senator R. N. Lauer	Hughesville
M. M. Lane	Warrensburg
R. M. White	Mexico

Coroner

Dr. H. J. Scherck	St. Louis
Dr. R. L. Thompson	St. Louis
Dr. R. B. H. Gradwohl	St. Louis
Roy Hamlin	Hannibal

THE SHERIFF AND THE CORONER

SECTION I

THE SHERIFF AS A POLICE OFFICER

The Sheriff in History

In a learned work on the office of sheriff[1] a distinguished citizen of the state of Missouri said forty-one years ago that the office "is, in essence, the same as in the earlier days of English jurisprudence." This comment is as true today. Any comment upon the office would be incomplete without a word concerning its historical importance.

The office of sheriff antedates the Norman Conquest. He was enjoying great power and importance a thousand years ago and according to some authorities[2] was brought into the English system after a model which existed in the Roman law. The name comes from the Saxon "shire-reeve" softened to "schireve," "shyrefe" and finally to "sheriff." In ancient times he received his commission directly from the King and specifically represented the sovereign. For a long period the sheriff ruled as the King's representative and as such was an officer of great splendor and power.

This did not last, however, and by the beginning of the thirteenth century he had started to decline[3] and in the course of time his appointment was transferred to judges while his term of office was strictly limited.

The office appears in America among the earliest colonial institutions. It was created in Virginia in 1634 and in Massachusetts in 1654. Except in Rhode Island sheriffs are in every state elective officers. The term is usually two years, and the powers are fairly uniform throughout the states.

In Missouri, the sheriff is a constitutional officer. The constitution of the state provides that he shall be elected for a four year term and that he may not succeed himself.[4] In this respect the constitutional provisions are the same for both sheriff and coroner.

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[1] *A Treatise on the Law of Sheriffs,* by Wm. L. Murfree, Sr., Second edition by Eugene McQuillin, 1890.

[2] Coke on Littleton.

[3] See Pollock and Maitland's "History of the English Law." This brilliantly written history gives a most reliable account of the origins of many of our law enforcement agencies.

[4] Const. Missouri, Art. IX, Sec. 10.

THE GENERAL FUNCTIONS OF THE SHERIFF

Originally the sheriff in England was a judicial as well as a ministerial officer. He once held court in the shire and exercised no inconsiderable jurisdiction. With a few exceptions, all of the powers of a judicial nature have been taken away, and, except in Scotland, they are now lost almost completely.[1]

By the time of Lord Coke[2] the functions of the sheriff had become standardized under three general heads:

1. To serve processes by which a suit is begun.
2. To execute the decrees of the court.
3. To act as conservator of the peace within the county.[3]

Three hundred years later in nearly every state of the United States and in England, the sheriff retains practically the same powers.

In Missouri he carries into execution all orders of the court, both prior to and following the decree or judgment. He serves summons to defendants, warrants of arrest, subpoenas to witnesses, writs of attachment and other orders. He summons jurors and during the trial has a limited custodial power over the jury. After the judgment he collects the amount due under the judgment, if necessary by the seizure and sale of property. In criminal cases, he has the custody of the accused and temporarily of the convicted. He hangs criminals sentenced to death. As custodian of the accused he is the keeper of the jail and is liable for the reasonable care and preservation of life and health of prisoners. While in some American states he retains his ancient tax-collecting power, he has no such duties in Missouri. He has, however, certain duties in connection with elections in that he issues election proclamations, delivers ballots and summons election judges.

An important function and source of income is his duty to attend court. There he maintains order and executes the directions of the court. For this he receives a per diem fee.

The present survey has no interest in the sheriff's functions as a process server, as a jailor, or as the minsterial official who executes court orders. The method of selecting and compensating the sheriff makes it very doubtful whether the court is served as well as it might be by some other more modern method of administration, but from the standpoint of meeting the rising tide of crime, such a change would have small importance. The third function described by Coke, that of conservator of the peace, is of supreme importance in this connection. It is in the quaint words of the great Lord Chief Justice "the life of the commonwealth."[1]

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[1] A survival appears in Missouri and in other states in the power which the sheriff possesses to accept recognizances, R. S. Mo. 1919, Sec. 11640.

[2] 1560-1634.

[3] Coke Litt. 168.

THE SHERIFF AS CONSERVATOR OF THE PEACE

The Supreme Court of the United States has defined the function of the sheriff in the following terms: "As conservator of the peace in his county or bailiwick, he is the representative of the King, or sovereign power of the state for that purpose. He has the care of the county, and though forbidden by the Magna Charta to act as a justice of the peace in the trial of criminal cases, he exercises all the authority of that office where the public peace is concerned. He may *upon view,* without writ or process, commit to prison all persons who break the peace or attempt to break it, he may award process of the peace, and bind anyone in recognizance to keep it. He is bound, ex officio, to pursue and take all traitors, murderers, felons, and other misdoers, and commit them to jail for safe custody. For these purposes he may command the *posse comitatus* or power of the county; and this summons everyone over the age of fifteen years is bound to obey, under pain of fine and imprisonment."[2]

This common law definition of his power is reinforced rather than changed by the terms of the Missouri statutes: "Every sheriff shall be a conservator of the peace within his county, and shall cause all offenders against law, in his view, to enter into recognizance, with security, to keep the peace and to appear at the next term of the circuit court of the county, and to commit to jail in case of failure to give such recognizance. *In any emergency* the sheriff shall appoint sworn deputies, who shall be residents of the county, possessing all the qualifications of sheriff." . . . "Every sheriff shall quell and suppress assaults and batteries, riots, routs, affrays and insurrections; shall apprehend and commit to jail all felons and traitors, and execute all process directed to him by legal authority."[3]

The statutes of Missouri governing the sheriff's duties are the same in substance as those of several other states in which elaborate opinions have been rendered by the courts. An examination of these opinions[4] justifies the following summary of his duties:

1. He must suppress affrays and riots and upon notice that some public disorder is likely to take place take proper measures to prevent it.

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[1] Vitae republicae pax"—Coke Litt. 168.

[2] South v. Md., 18 How. 396 (1856).

[3] R. S. Mo. 1919, Secs. 11640-11642.

[4] Pearce v. Stephens, 18 N. Y. App. Div. 101 affirmed in 153 N. Y. 673; 48 N. E. 1106: Scougale v. Sweet, 124 Mich. 311, 82 N. W. 106: South v. Maryland, 18 How. 396: State v. Reichman, 135 Tenn. 685, 188 S. W. 597: See also 24 R. C. L 912 and 35 Cyc 1532.

2. When a *misdemeanor* or other *breach of the peace*[1] is committed in his view he should arrest the offender.

3. In cases where a *felony* or *treasonable act* is not committed in *his view,* the sheriff should arrest the guilty person even though he has no warrant directing such an arrest. This quite definitely implies the exercise of *some* initiative on his part.[2]

4. He should "use a reasonable diligence to inform himself of conditions in his county and will be derelict if he shuts his eyes to what is generally known in the community."[3]

5. He is, for the purpose of preserving public peace, the chief magistrate of the county and his duties extend even into incorporated villages and cities possessing police departments, although he has the right to assume, in the absence of specific information to the contrary, that such police officers are performing their duties.

In order to perform his duties he has the following powers:

1. He may arrest *without* a warrant for misdemeanors and breaches of the peace committed in his view or for felonies of which he has information.

2. He may arrest without a warrant a person whom he has reason to suspect is armed for the purpose of committing certain offenses.

3. He may *not* swear out a warrant upon the basis of facts of which he has been informed by others. Such information must be presented to the grand jury.

4. Under the power to summon the *posse comitatus* he may summon private persons in whatever number he deems necessary to assist in repressing disorder or in making an arrest.

From the standpoint of law enforcement, the whole problem hinges upon what amount of initiative the sheriff may be expected to exercise (a) in the prevention of crimes, (b) in the determination of responsibility for crimes committed in his county, (c) in the finding and apprehending of those guilty of crimes of major importance.

The most extensive discussion of this question is found in the opinion of the Supreme Court of Tennessee in the Reichman case cited above. Reichman was the sheriff of Shelby County in which the city of Memphis is located. Under an "ouster law," providing a method of removing "unfaithful public officers" the attorney-general sought the removal of Reichman. He charged that the sheriff had not only failed and neglected to enforce the liquor laws but through an understanding with the officials of Memphis had permitted saloons to be run in violation of law. The facts clearly indicated that the sheriff knew of the existence of lawless saloons but made no effort to suppress them, leaving such police duty to the city officials.[1] Reichman claimed that he was not required to do detective work to discover violations of the law and had no power to arrest the saloon keepers for committing misdemeanors on mere hearsay. The court heard the case twice and delivered two lengthy opinions in which the rules of law concerning the duty of the sheriff to exercise initiative were interpreted as follows:

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[1] A breach of the peace includes all unlawful acts and acts of public indecorum which disturb or tend to disturb public peace or good order. See Galvin v. State, 6 Cold, 294.

[2] See discussions of this point in the cases cited above.

[3] State v. Reichman, supra.

"When the sheriff has notice that an offense is being committed it is his duty to act in prevention and suppression. This involves the duty at least to make some investigation to ascertain the facts. . . . He is not bound to maintain a detective force. . . . If upon investigation he learns facts which show that an offense has been committed it is his duty to swear out a warrant and make the arrest. . . . (If his facts do not justify this) it is his duty to report the matter to the grand jury for investigation."

In case the sheriff, under such an interpretation of the law, can be shown to have been guilty of wilful neglect and failure to perform his official duty, the circuit court may remove him from office. No case on the point has yet come before the Missouri Supreme Court although similar cases have been brought in the circuit courts. In 1921 the prosecutor of St. Louis County sought the removal of the sheriff not only on the ground that the sheriff had personally seen violations of the law but that he had not investigated violations of the law of which "credible information" had been given him. The court refused to instruct the jury to find the sheriff guilty on any ground other than neglect to make an arrest for an offense in his view and the sheriff was not removed.[2]

Even according to the Tennessee interpretation the sheriff's duties do not require that he do more than make the most trivial and superficial investigations of crimes committed in his county. He need not employ detectives nor use his deputies as detectives. He may not make an arrest without a warrant unless "he learns facts that show an offense has been committed," and in the absence of such facts he must go to the grand jury for investigation. The power possessed by police of arresting "on suspicion" is denied him and going to the grand jury is an empty gesture because in most counties this would ordinarily mean prolonged delay.

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[1] The mayor and other city officials had already been removed. State v. Crump, 134 Tenn. 121.

[2] State of Mo. ex rel Fred E. Mueller, Pros. Att., v. John F. Willmann, Sheriff. Cir. Ct. of St. Louis Co. Sept. Term 1921. No. 36724.

That the sheriff's powers under such laws as obtain in Missouri have proved wholly inadequate is shown by the efforts of some states to strengthen the legal sanction to compel more activity. In Iowa, for example, the law was strengthened in 1909 by the adoption of the following section: "It shall be the duty of the sheriff, by himself or deputy, to preserve the peace in his county, to ferret out crime, to apprehend and arrest all criminals, and in so far as it is within his power, to secure evidence of all crimes committed in his county and present the same to the county attorney and the grand jury; to file information against all persons who he knows or has reason to believe, have violated the laws of the state. . . . The sheriff shall, whenever directed so to do in writing by the county attorney, make special investigation of any alleged infraction of the law within his county, and report with reference thereto within a reasonable time to such county attorney."[1]

To this statement of the legal status of the sheriff as a conservator of the peace a most extraordinary possibility exists under the present law. The statutes provide that the sheriff shall be disqualified from serving the court in a case "when it shall appear to the court . . . that the sheriff is interested in the suit, related to or prejudiced against any party thereto, or in anywise disqualified from acting."[2] In such cases the coroner must act in his stead. The effect of such a possibility is to make many sheriffs exceedingly careful not to be too energetic in bringing a suspect before the bar of justice. It really amounts to a legal impediment to the exercise by a sheriff of any diligence in solving crimes and in apprehending criminals. It is the final sweeping away of the last vestige of legal justification for calling the sheriff a "conservator of the peace" at all.

Limitations and Method of Study

It should be understood at the outset that this survey of the sheriff's office has been conducted with distinct limitations placed upon it. In this respect it differs from the reports herein contained which deal with the police, the prosecutor and the coroner. Police organization is a relatively recent development and while the survey indicates necessary improvements in methods, there is no question as to the continuation of the general scheme. Like the prosecutor, the office itself is intimately entangled with the laws of procedure under which it operates. Detailed consideration is therefore necessary. In the case of the coroner, there are important functions necessary to be retained which must be disentangled and distributed to other agencies. With the sheriff the problem is fairly simple. Its solution involves a single important change. The issue is not the manner in which the office is administered nor the distribution of widely differing functions; it is the plain fact that under the law and the practice under the law the sheriff is not the officer to whom we should look for the solution of our crime problem. Hence in our report we are brief and non-critical. So far as possible, we have avoided:

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[1] Iowa Code of 1924, Secs. 5181-5184.

[2] R. S. Mo. 1919, Sec. 11648.

(a) a detailed study of the administration of the office

(b) a search for graft or inefficiency in the conduct of the office

(c) all of those aspects of the office which deal with the civil law as distinguished from the criminal law.

The following steps were made in our survey of the sheriff's office:

1. We made a somewhat complete study of the legal basis of the office both in the statutes of Missouri and in the common law.

2. A personal study was made by the author of the report of the office in the two largest counties in which the sheriff has criminal jurisdiction and of one selected rural county.

3. Members of the staff personally visited eighteen selected counties, interviewed sheriffs or their deputies and made copies of certain records.

4. A questionnaire (see p. 571) was sent to every sheriff in the state with a request for information. Answers were returned by thirty-seven.

5. A study was made of the question of state police as it has been established and has operated in various states with a view to its recommendation for the state of Missouri.

Thus the survey secured first-hand investigation of twenty-one counties and information submitted by the sheriffs of thirty-seven counties. Allowing for duplications this survey is based upon information drawn from fifty-four counties, including examples of all possible types, large and small, semi-urban and rural, north and south.

PERSONNEL

The following table indicates the regular prior occupations of sheriffs in the eighteen counties reported upon by staff members. It is probable that this indicates fairly clearly the characteristic personnel of sheriffs throughout the state:

FORMER OCCUPATIONS OF SHERIFFS

Farmer	24	Drayman	2	Liveryman	1
Policeman	6	Stockman	2	Butcher	1
Merchant	4	Carpenter	2	Lumberman	1
Contractor	3	Penitentiary guard	2	Mechanic	1
Salesman	3	Tinner	1	Storage business	1
Miner	3	Barber	1	Blacksmith	1

Of *61* sheriffs concerning whom we were able to secure information, *33* had held some public office before. The following table indicates the frequency with which certain offices were the political stepping stones to the office of sheriff.

FORMER PUBLIC OFFICES HELD BY SHERIFFS

Constable	9	Assessor	1	Deputy County	1
Deputy Sheriff	8	Mayor	1	Post Master	1
Chief of Police	6	Collector	1	U. S. Marshal	1
Sheriff	3	Circuit Clerk	1	None	28

The above table indicates quite clearly that the limitation placed upon the tenure of office by the sheriff which prevents him from succeeding himself is quite effective in limiting the tenure of office. The infrequency with which a sheriff ever attains office again after his period of service has expired indicates that in well over ninety percent of all cases a sheriff serves only one term.

DEPUTIES

The law provides that "any sheriff may appoint one or more deputies" with the approval of the circuit court. These deputies "shall possess all the powers and may perform any of the duties prescribed by law to be performed by the sheriff."[1]

Except in certain counties the salaries of deputies are paid by the sheriff out of his fees. The approximate salaries of full time deputies in the larger counties range between $1200 and $1800 a year. Those of the smaller counties average less than $1000. In the fifty-one counties studied, 31 had full time deputies. The number of these varied from one to four except in St. Louis, Jackson and Buchanan counties. No definite limit is placed upon the number of part time deputies and such appointments are made sometimes in considerable numbers. One sheriff said he "didn't know how many deputies he had."

An act of the legislature passed in 1917 and amended in 1921 provided that the sheriff and county court of St. Louis county might appoint twenty deputies. These deputies receive a regular salary of $5.00 a day from the county treasury. They are supposed to be used for general police work. Deputies receiving salaries from the county are provided by law in Buchanan, Jasper and Jackson counties and in St. Louis.

In Jackson County, there is a County Marshal who has approximately twenty-five deputies for county police work. These men receive $125 a month. They patrol roads, enforce traffic laws, and perform other police functions. It has not been an entirely satisfactory organization. It is difficult to get men for the salary who are competent; there is a very large turn-over and rather poor work is the result.

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[1] R. S. Mo. 1919, Secs. 11637-38.

COMPENSATION

Except in five counties the sheriff is exclusively upon a fee basis. These fees are derived from a variety of sources. There are innumerable fees connected with civil and criminal cases for such services as serving subpoenas, warrants, jury notices, etc. There is a per diem fee for attending court and then there are other miscellaneous fees, such as those derived from sheriff's sales and services connected with elections. An effort was made by the field workers of the survey to gather exact data concerning the total yearly compensation of sheriffs. This was not possible in many cases because the records for 1924 had been taken by the outgoing sheriff and only occasionally had quarterly reports been filed with the county clerk. Some data were secured from eight counties, however, from which the following estimates were derived.

Average sheriffs' fees in 1924 in large counties (50,000 population or more) were:

Fees in civil and criminal cases	$5500
Fees for attending court	3500
Fees, miscellaneous	3500
Total	$12500
Paid to deputies	5500
Apparent profit	$7000

The same estimates for small counties (less than 50,000):

Fees in civil and criminal cases	$2000
Fees for attending court	1200
Fees, miscellaneous	500
Total	$3700
Paid to deputies	2000
Apparent profit	$1700

The above is not a true estimate of the actual compensation of a sheriff, however, for the reason that the data upon which the above estimates are based did not include a very important source of profit, that derived from feeding prisoners. The general practice in this matter is that the county court fixes a definite amount per prisoner per day and the sheriff may exercise his own judgment as to how it shall be spent. The amount fixed runs from 60c to 75c in the various counties studied.[1] The sheriff may derive profit from this allowance depending upon his ability to purchase food economically, his ideas of what a prisoner should be allowed to eat and the appetites of the prisoners. It is clearly an indefensible custom but it obtains almost universally in the United States. Occasionally in Missouri counties the county court requires this feeding to be done at cost, a practice which has much to commend it. Another kind of profit is that derived by various sheriffs from the keeping of federal prisoners who are "farmed" out by United States courts. Against these sources of profit should be set off expenses which sheriffs must meet other than the employment of deputies. These are numerous and occasionally very heavy. The most important is the purchase and upkeep of automobiles.

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[1] It is usually 75c.

In these counties where the sheriff derives his compensation from fees, his income is probably in large counties well above $10,000. In some it is said to reach $20,000. In small counties it runs from $2500 to $10,000. This is, of course, much more than the state is willing to pay any official doing similar work at a fixed salary. The money comes from the public in one way or another, however. In good American style, the public is content to pay twice what a product or service is worth if it does it indirectly.

This is no place to reiterate the arguments against the fee system. The facts are common property. Applied to the sheriff's office it means that we are paying the sheriffs of the state an annual amount which is sufficient to purchase adequate police protection but on account of the method of payment are actually making it impossible to get protection. The fee system is a direct obstacle in the way of improvement in criminal justice.

Criminal Complaints

In any state and in any community the following questions go to the heart of the problem of crime. When a criminal act is discovered is it reported to some public authority? Do minor public officials and citizens as well habitually follow a practice of reporting the discovery of suspicious or obviously criminal acts to some definite public authority? Does this public authority properly record such complaints and make such a record the first step in a process of searching for the cause of the act? In every city which has a police department the answers to these questions are simple. Complaints of all sorts are reported to the police who make permanent and more or less complete records of the facts reported.

But in that part of the state of Missouri which does not enjoy municipal police protection, what system of reporting and recording complaints is in force? In law as well as in the mind of the public, the sheriff is the person who throughout the county stands above all other law enforcement officers. This being true, it is not unreasonable to expect criminal complaints to be made to him and to expect that he will adequately record them. In order to determine with what regularity and completeness such reporting and recording is actually done, the following somewhat lengthy inquiry was inserted in the questionnaire to all sheriffs.

1. Do you keep a separate record of all crimes committed in your county whether arrests follow or not:
   (a) Where information comes to you personally or to your deputies?
   (b) Committed in your view or in the view of your deputies?
   (c) When reported to you by some other person or official having knowledge thereof?
2. If so, what is the nature of that record?
3. Would you favor amending the law so as to require reports to your office by officials having knowledge of crimes committed?

Of the thirty-seven sheriffs who answered these questions, thirty-two made no such record at all in any case. Of the five who kept any record of complaints the methods of making such record varied. In one case a notebook is used, in another "private notes," while in no instance was a definite form followed. The answers to question 3 numbered 35. Of these 34 answered "yes." Some suggested that reports be made to the prosecuting attorney also. Several in addition to indicating an approval of such a compulsory law commented that "it would be of great benefit."

There is therefore no generally recognized custom of reporting crimes committed in that part of the state which does not enjoy urban police protection. The sheriff, while vaguely made the chief police officer of the county, does not act as the clearing house of information concerning crime. He makes no proper records of the circumstances attending even such crimes as come to his attention. The criminal who is not immediately discovered and apprehended may rest secure in the knowledge that no one seeks to remember his crime and no one feels responsible for his apprehension. He has no official nemesis to dog his footsteps. He may proceed undisturbed to his next attack upon society.

The Sheriff's Attitude Toward Criminal Work

Our questionnaire yielded some interesting facts concerning the attitude of sheriffs generally toward criminal work. The following questions were included in the questionnaire which went to all sheriffs:

> Do you and your deputies personally investigate all crimes committed in your county, or do you act only when a warrant is issued?
>
> Do you believe that you should be expected to use your time and that of your deputies to investigate crimes reported by newspapers or otherwise to have been committed?

In reply to the first of these, twenty said "yes," three said "yes, in all important cases" and seven asserted that they act only when a warrant is issued.

In reply to the second only six said "yes," eighteen "no" and thirteen said that they thought they should make investigations only if they received compensation. Presumably this means that the latter group does not act at all as there is no legal means of paying for such investigation in any except the counties in which salaries are paid.

A fair interpretation of these replies is that the average sheriff considers it his general duty to investigate crimes but unless rather extraordinary circumstances surround the particular offense, he does not act. Such an interpretation is the only possible way to reconcile the seeming contradiction between replies to one question which indicates that they investigate *all* crimes, while the investigation of "crimes reported by newspapers or otherwise" is not a part of their duty. To say the least, it indicates a lack of vigilance and definiteness of purpose which is not indicative of effective crime control.

In fairness to sheriffs it should be added that all except a few of the fifty-one sheriffs who were reached in the survey agreed that the main responsibility for criminal work should be vested in some sort of state organization. This attitude of sheriffs in Missouri is not unusual. Wherever serious attempts have been made to get their point of view toward their criminal duties, the same opinion has been found. In 1916 a study was made of the attitude of sheriffs in New Jersey[1] and it was found that sixteen of twenty-one sheriffs did not take seriously their duty to apprehend criminals. The same has been found true in several other states, including Kentucky, Delaware and Illinois.

A STATE POLICE FORCE

Of fifty-one of the sheriffs now holding office in Missouri who have responded to our inquiry an overwhelming majority was in favor of a state police force. The following table summarizes their opinions on the subject.[2]

Those unqualifiedly in favor of establishing state police	29
Those favoring it with some qualifications	10
Those opposed	12

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[1] See "State Research," supplement to "New Jersey." Vol. IV, No. 4, Jan. 1917, p. iv.

[2] These expressions were in reply to the following questions:
Question answered by eighteen sheriffs—

What is the sheriff's opinion of a change in the law which would relieve him of general police duties, leaving him his other duties such as process serving, attendance at court, and custody of the jail, and vesting general maintenance of peace and other police duties in a state police force or a county police department?

Question answered by thirty-seven sheriffs—

What is your opinion of a state police force or state constabulary to assist the sheriffs of the state in the enforcement of the criminal law?

The only possible remedy for the problem created by the inadequacy of the sheriff's office is a state police force. A state-wide agency organized to meet modern crime conditions by means of modern police practice is necessary. Such an agency should not supplant sheriffs and constables but it should fill the need created by the fact that these older offices have become primarily civil rather than criminal agencies.

State police departments have now passed the experimental stage. They are operating with distinct success in a number of American states. Pennsylvania, New York, New Jersey, Massachusetts, Michigan and West Virginia have probably the most completely developed forces while West Virginia, Connecticut and Texas have forces designed for special purposes.[1] The Pennsylvania State Police has existed since 1905, that of New York since 1917, New Jersey and Masaschusetts since 1921. Rhode Island and Maine have recently provided for departments and are now in the process of organization.

State police departments have chiefs appointed by the governor on an indefinite tenure. Removal is only after the filing of charges and a hearing by the governor. Pennsylvania has had only two superintendents in twenty years, New York two in eight, the second a Republican appointed by a Democratic governor. There has so far been no suggestion of partisanship in the appointment either of superintendents or of lesser officials in the forces.

The personnel of the forces is selected by the superintendent under regulations approved by the governor. Training schools are provided and a most rigorous and complete course of instruction is the rule. The authorized maximum strength of the various forces is indicated in the following table:

New York	468
Pennsylvania	421
West Virginia	281
Michigan	150
Massachusetts	140
New Jersey	137
Connecticut	90
Texas	84

The organization of state police departments is semi-military. The force is divided into troops, each of which is responsible for policing a definite area.[2] There are troop headquarters and also "sub-stations" scattered throughout the state to afford convenient means of distributing and controlling the force.

The chief point of distinction between state police and the present system of protection by sheriffs and constables is the fact that the former are full time professional men who are on almost constant patrol duty. The most remote sections of the state are reached with regularity. Any citizen of the state may easily report crimes to a sub-station or to a member of the force on patrol. The means of patrol are usually by horse or by motorcycle, depending in each case upon the sort of roads to be covered and the particular problems of the portion of the state involved.

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[1] Most of the facts here set forth are drawn from Bruce Smith's "The State Police," the most authoritative and complete description of state police departments.

[2] In New York there are six troops, in Pennsylvania five, and in other states from one to five.

The foregoing sketch of the essentials of a state police department has purposely been made brief. A police department for the state of Missouri should of course follow the broad outlines of policy which have characterized other states. But many details should be adjusted to local problems and conditions. The problems of policing New York and Pennsylvania are not unlike those which would be met in Missouri. In all three states a large area is mountainous, and the characteristics of the population in various sections of these states are not dissimilar. It is likely that much could be gained from a study of these pioneer state police departments.

In case a state police department should be established in Missouri, there is no need to modify the status of sheriffs and constables. They have been left practically unchanged in the states establishing state police. The relation of the state police department to the sheriff is co-operative. The sheriff retains his power to arrest and in case of emergency to summon the posse comitatus. The state police departments already established have succeeded in tactfully co-operating with the sheriffs and in working out by common consent a division of responsibility satisfactory to both and most beneficial to the interests of the lives and property of citizens.

It is not inappropriate to close this consideration of non-urban police with a very vigorous and intelligent statement made by a recent governor of the state of Missouri:

> "Nowhere is there any effective agency for enforcement of law and maintenance of order except the National Guard. The state owes an inescapable duty to the public to preserve peace and order. . . . No law can be enforced without the co-operation of three officials, sheriff, prosecuting attorney and court. When one or all of these three fails, anarchy results.
>
> "The state government has no power over any of the three. Let it be assumed that in most instances the courts will do their duty. If the sheriff fails to apprehend or the prosecuting attorney fails to prosecute the people of the county are helpless until the next election. No state authority can either suspend or remove any sheriff, prosecuting attorney or any other local official. No power exists whereby

the State can send any of its officials into the county to assist in preserving peace and order. Unless the emergency is grave enough to warrant sending the National Guard, the state and the people are helpless.

"What are the results? A condition of lawlessness that borders on anarchy; the growth of intolerance with law and distrust of constituted authority; the un-American method of taking the law into private hands; worse still—the growth of a public cynicism, the evil of which cannot be measured. The abject failure of the state and local authorities to enforce the law is causing a cynical disregard of any restraint which is one of the danger signals of the time.

"The best machinery for law enforcement by state authority yet devised is a State Police force. A state constabulary is the remedy, so far as remedy exists in the powers of government against lawlessness.

"Such a police force can be trained. It is not balked by a county line. It can police and protect the state highways. It can enforce the fish and game laws and outlaw the moonshiner. It would have no local, personal or political entanglements. It would be of especial value in preventing riots, and disorder. It would have no fear of proceeding against arson. It would be an ever present protection against lynching. It would command and receive respect. In operation, such a force would practically pay its own way, even leaving out of consideration its great value as peace officers. It should be a very moderate force during ordinary times, but capable of rapid expansion in times of need. It should be under non-political control. Its sole reason for existence would then be to enforce the law equally and equably in every county in the state, and without fear or favor, to protect every citizen in the exercise of his right to life, liberty and property."[1]

SUMMARY AND CONCLUSIONS

The foregoing discussion of the sheriff's office has brought out various aspects of its total inadequacy as a police office. The case may be summed up as follows:

1. The office of sheriff was not created to cope with crime, even medieval crime; it was an office of a magisterial and judicial character. While its functions have changed somewhat, it is still in general outline much like it was in England nine hundred years ago. It certainly is almost identical with the office as it was introduced into the American colonies three hundred years ago. Meanwhile the problem of crime in rural communities has kept pace with the development of mechanical invention, and of means of transportation and communication. Crime has become specialized in method and in personnel, the good road and the automobile have exposed the most

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[1] Message of Gov. Arthur M. Hyde to the 52nd General Assembly, 1923.

remote rural sections to sudden attacks from the criminal districts of great cities and the increased well being of the farmer has made his home a tempting prey. As protection we have retained a medieval functionary, with almost unchanged status and powers.

2. The sheriff remains elective while every important police official in the world has been appointed for years. No city would seriously consider electing the chief of police—such a suggestion would provoke the same sort of a reply as that of electing the superintendent of schools. London, in spite of its atmosphere of by-gone ages, is nevertheless protected by an appointed police head; so is New York, Chicago, St. Louis, Kansas City, St. Joseph and Springfield. But every county in Missouri is protected by a politically elected sheriff. It is an absurd distinction, as if there were any good reason why the County of St. Louis, with 150,000 population, should elect its police head and the city of Springfield, with half as many, should appoint its police chief. The office in every county of the state with its fat fees and its political advantages becomes the aim and the ambition of the rising politician rather than the opportunity for service of the man genuinely interested in the administration of the law.

3. The present fee system could not be more definitely devised to turn the interests and attention of the sheriff away from the enforcement of the criminal law and in the direction of his civil duties. Even by the utmost efforts he can earn only a small percentage of his income from the enforcement of the criminal law. In fact undue devotion to this function causes a diminution of fees from other sources and a definite increase in the expense of the office. If he seeks the capture of a criminal and spends days in the process and eventually succeeds, he gets one dollar for the arrest. If he fails to capture his quarry he gets nothing. In all except a few exceptional counties, the deputies he uses for detective and police work, the automobile in which they ride, and the gasoline consumed in the process must come out of sheriff's profits from work on civil suits or in attending court or from feeding prisoners. To expect a human being to do other than neglect such costly duties is to expect the highly improbable.

4. The occupations to which most sheriffs are accustomed are not such as to prepare them for enforcing the law. The table shown on page 65 indicates that of the fifty-nine sheriffs concerning whom we secured the necessary information, only eight had served in a vocation which might train them for police work; six of them had been police officers and two penitentiary guards. The latter occupation would only be training in a limited sense also. Of those who

held public office only a few held an office that might serve as training for an effective service as sheriff. Moreover, the state by preventing a sheriff from succeeding himself has succeeded in preventing over ninety percent from ever holding the office for another term. The power of the state has decreed that sheriffs shall be amateur police officers while the progress of crime has countered by hurling against this untrained protector all of the skill of professional criminals. It is no wonder that crime flourishes in the face of such an unequal conflict.

5. Modern crime is a state wide problem while the jurisdiction of the sheriff is limited to the county. There are certain to be great irregularities among the counties in the effectiveness of the sheriff's work. The counties where sheriffs are weak or indolent or incompetent will be well known to the criminal. Moreover the counties along the border, especially in the southeastern section of the state, will present unique conditions of great concern to the rest of the state. A police force is needed which is not limited to the borders of a county, but which can distribute its strength in accordance with needs and often with suddenly developing needs. For this reason the suggestion often made to establish a county police department in a few counties is fundamentally unsound. Such discrimination would merely increase the danger in the less fortunate counties.[1]

6. In 85% of the counties studied there is no record of crimes committed while there exists practically nowhere a practice of reporting complaints to the sheriff. Crimes which are unreported and unrecorded are forgotten. Subsequent prosecutions are handicapped by lack of freshly recorded circumstances of crimes with lists of witnesses and other data. No plan for state crime records can succeed in the face of this neglect and some central recording is essential to an intelligent fight against crime.

7. It is not strange in view of the foregoing that the sheriff's attitude toward the police duties attached to his office is one of indifference and annoyance.[2] But while the sheriff cannot be blamed for holding it, this attitude is itself another most important factor in the case for a radical change in methods of rural police work.

8. The legal status of the sheriff clearly does not describe a police officer. It describes a court attache with power to function on extraordinary occasions as a citizen leader of a temporarily organized

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[1] Such a plan was proposed in a bill introduced in the last session of the legislature providing a police department in St. Louis County. See Senate Bill No. 3, 53rd General Assembly.

[2] See p. 70.

body of bystanders.[1] This may in an emergency be appreciably better than nothing but it bears the same relation to fighting modern crime that the minute men of 1776 would bear to modern warfare. The sheriff is not under the law required to ferret out crime, he is not required to use any considerable portion of his time in preventing it, and the method of holding him accountable is clumsy and wholly inadequate. It should be further noted here that not only is any unusual diligence on the part of a sheriff in solving a crime and bringing an offender to justice not adequately rewarded but it may result in the sheriff's disqualification to participate in the subsequent trial with loss of fees for his pains. This illustrates one of those inconsistencies which would be ludicrous if it were not so serious a final deterrent to the functioning of what is at best only a slender protection to a crime infested public. The sheriff is not a police officer—he is not even permitted to be one.

9. The sheriffs probably know their own inadequate position as police officers better than anyone else. The ones from whom we secured an opinion overwhelmingly favor a state police force to assume that responsibility which they are unable to assume.

10. There should be provided by legislative act a state police department similar in organization and duties to those of Pennsylvania, New York and Massachusetts.

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[1] This is really what the posse comitatus amounts to in practice.

THE SHERIFF AND THE CORONER

SECTION II

THE OFFICE OF CORONER

The Ancient Office of Coroner

In common with most of our institutions for the enforcement of law, the office of coroner has its origin far back in medieval history. It might have been in the reign of Alfred, ten centuries ago, but the better evidence fixes it at 1194. The coroner was named from the Latin, *a corona,* because he was the officer of the Crown who kept some of the "pleas of the Crown." He did not "hear and determine" but he kept records of all that within the country concerned the administration. More important, however, was his function as guardian of the revenues of the king which flowed from the enforcement of the criminal law. The property of the felon even to the knife which struck the unhappy victim was seized and accounted for by the king's coroner. It was, and still is, also his duty to inquire of "treasure-trove" which is according to Blackstone, money, plate or other precious metals found hidden in some private place, the owner thereof being unknown. The coroner protected the king's right to "royal fish," the sturgeon and whale, which when thrown ashore were the property of the king, on account, it is said in ancient books, "of their superior excellence." Shipwrecks were also his majesty's property and these, too, the coroner claimed for him.

The coroner's inquest was from the earliest times held by the free men of the neighborhood *before* the coroner; most commonly the inquest jury contained the representation of "four neighboring townships," and consisted of from twelve to thirty men. This jury served not alone to hear evidence, but to supply it and stated from their own knowledge or from hearsay how the deceased came to his end. The verdict might be "natural death," "misadventure," "suicide" or "murder." It was the coroner's business to record the facts as revealed by the inquest on his roll. He was required to make certain that the first finder of the body be under bond to appear when subsequently and consequently he usually took security for his appearance from two of his friends. There were in medieval England four coroners in each county. They received no fixed pay, but were excused from certain public obligations.[1] The coroner's records of inquests were subsequently produced when the King's judges came on circuit to hold court and in murder trials the coroner's records served as evidence. The ancient rolls are in many cases preserved and furnish a remarkable picture of life in the middle ages. The following is a translation from the Latin of the record of an inquest held in Oxford in the fourteenth century:

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[1] Under the present law of Missouri there is a survival of this in the fact that the coroner is specifically excused from jury service.

> "AGNES BURLAND: Saturday, Sept. 9, 1391. Inquest before Thomas Hokyn on Monday before the feast of the Exaltation of Holy Cross, 15 Ric. II., on a view of the body of Agnes, wife of William Burlond, who was found dead and buried in the garden of William, her husband, in the parish of St. Giles, by the four nearer parishes, viz., St. Mary Magdalen, St. Giles, St. Thomas, and Wolvercote, by the oath of Michael Smyth, Walter Barliche, John Aubelle, John Rye, John Damalis, John Martyn, Ric. Bygge, Roger Dynnell, John Hurle, John Webbe, Will' Bodyn, and Rob' Stile; who say that William Burlonde on Saturday last slew Agnes his wife with a knife worth one penny, and with the knife he smote her on the head even to the brain. And they say that he has in goods six quarters of barley, a horse worth 6s., and 18 pigs worth 16d. each. They say that (blank) son of William Herebard, first found her. For which felony Burlonde fled to St. Giles's Church on the said Monday. And the abbess of Godstow will answer for the price of the goods. Pledges of the finder, John Bayly and Thomas Lokeer. The said William abode in that church until the Wednesday next, when he confessed before the coroner that he had committed the said felony, and abjured the realm, and Southampton was assigned him for a port."[1]

It will be noted from the above that the record of a murder was fairly completely recorded. The names of jurymen were entered, the story of the crime, the value of the felon's property, the person responsible for the safe keeping of the property, and the whereabouts of the felon. In this case, the murderer having "sought sanctuary" in the church was permitted to "abjure" or leave the kingdom by whatever port the coroner should designate. In many of these old records the carefulness of the coroner's examination is notable, exceeding, one regrets to say, most of the examinations made in modern times. For example, in unsolved murders the circumstances of the crime are given in detail, even to careful measurements of the wound, as in a case in 1302,

> "and he had one wound on his left shoulder with a sword; it was six inches long and two inches deep, but was not mortal; also he had another wound on his left side, which was mortal, one inch long, half-an-inch broad, and two inches deep; and the same day an inquest was held before the said coroner by the oath of William de Pussey."

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[1] *Records of Medieval Oxford* edited by Salter, Oxford, 1912.

An examination of the statutes passed throughout the centuries during which the coroner has existed in England indicates quite clearly that the office was continually falling into bad ways. Repeated attempts were made to reform it by changing the mode of election, by seeking to improve the quality of jurors, by making provisions for investigation of the office, and by other means. Shakespeare, who it may be granted knew well the point of view of the people of England, made a joke of the "crowner" in the only bit of humor found in his "Hamlet." But in spite of all this, the office lived and lived, and followed the spread of British institutions around the world.[1]

This office still exists in England with few changes from medieval times. His jurisdiction is over much the same sort of cases as in Missouri. He need not be a physician. He is selected, however, by county councils, not as in America by popular election.[2] The office was brought to America with other legal institutions and it exists with some variations in all states.[3]

THE JURISDICTION OF THE CORONER IN MISSOURI

The laws of Missouri require that the coroner of a county "shall take inquests of violent and casual deaths which take place in his county, or in which the body of the deceased is found in county."[4] In practice, the sorts of cases over which the coroner has jurisdiction are homicides, both felonious—justifiable and excusable,[5] suicides, accidental deaths and deaths occurring without medical attention.[6]

These are the main responsibilities of the coroner, but following a precedent centuries old, he is given by law police powers throughout the county second in importance only to that of the sheriff. In many places in the statutes he is linked with the sheriff, constables, and other police officers in grants of power to make arrests, to serve subpoenas, and in similar functions. He serves, moreover, as a sort of understudy to the sheriff. In case the sheriff's office "shall be vacant by death or otherwise" the coroner is authorized to perform all the duties of the sheriff. This responsibility also falls upon the coroner when the sheriff in any way is disqualified from acting in cases in which he is a party or where it may appear to the court "that the sheriff is interested in the suit, related to or prejudiced against any party thereto, or in any wise disqualified from acting." In this connection it should be noted that in the cities where the sheriff is on a salary and all fees are retained by the county there is no provision for compensating the coroner for this extra duty. This seeming oversight by the legislature, according to the coroner of St. Louis, works a real hardship in his case and should be corrected.

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[1] For the early history of the office of coroner and for all of the statutes relating to it, see Wellington's *The King's Coroner*, London, 1906.

[2] The rules governing the coroner's office were largely revised by the Local Government Act of 1882 and the Coroners Act of 1887.

[3] See Howard's Local Constitutional History of the United States, Baltimore, 1889.

[4] R. S. Mo. 1919, Sec. 5916.

[5] For definitions of these, see Kelley's *Criminal Law and Practice*, ch. 22.

[6] Death without medical attention has various definitions. For example in St. Louis the City Hospital calls the coroner on all cases when death occurs within 24 hours after admission to the hospital.

METHOD OF THE SURVEY

The material used in this study of the coroner's office is drawn from the following sources:

1. The statutes of Missouri and the decisions of the Supreme Court.
2. Public records such as the records of coroners' inquests, cost bills, and reports of coroners to the county treasury and clerk.
3. Personal interviews.
4. Personal observations of procedure.
5. Questionnaires returned by coroners.

In the city of St. Louis and in Jackson County the author of this report conducted a personal investigation of the office. He interviewed the coroners themselves and members of their staff. He observed inquests in each city. He made careful examination of coroners' records of a period of years, copying information which seemed pertinent to the report. The investigation of the office in these two counties occupied a majority of the time which he gave to the investigation.

In studying the other counties, two methods were followed. A group of twenty counties was selected for a more or less intensive study. In these counties the investigator or a member of the staff of the survey personally examined the coroners' records and secured first hand information concerning the coroners' methods by means of interviews with the coroners or with other public officials. In all of these counties the survey copied from the record all of the cases for the year 1924. In each of them the year 1923 was added where there were less than twenty cases in 1924. In one instance, Franklin County, five years, from 1920 to 1924 inclusive, were copied. A special effort was made to get information concerning cases in which homicide verdicts were returned and a separate form was provided for the purpose of digesting all of the facts concerning the inquests. This included a digest of the testimony, the names of jurors, and other important facts.[1] The following table gives the names of the counties thus intensively studied, the years' records included in the examination, the total case records copied and the number of homicide cases included in these.

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[1] See pages 569-570 for the forms entitled "Records of Coroners' Inquests," "Questionnaire to Coroners," and "General Information on Coroner's Office."

TABLE I

TIME PERIOD AND CASE RECORDS STUDIED

County	Years Studied	Total Case Records Copied	Homicides
Boone	1923–24	37	5
Butler	1923–24	28	1
Cape Girardeau	1923–24	28	5
Cole	1923–24	32	6
Dunklin	1923–24	23	12
Franklin	1920–24 inclusive	75	5
Greene	1924	29	8
Grundy	1924	1	1
Jasper	1924	95	7
Livingston	1924	1	1
Marion	1923–24	40	3
Nodaway	1923–24	15	2
Pemiscot	1924	31	6
Pettis	1924	4	4
Phelps	1923–24	13	2
Randolph	1923–24	17	5
St. Francois	1924	26	0
St. Louis	1924–25	285	21
Saline	1923–24	19	1
Scotland	1923–24	3	
Cooper	1923–24	4	1
		806	96

In these counties complete information was secured concerning the administration of the office. The extent of this information is indicated by the questionnaire form which was filled out by the field men of the survey.

The counties selected for this part of the study were fairly well scattered over the state. Population was also taken into consideration in selecting them. They vary from rural Scotland County with 10,000 to semi-urban Jasper, Greene, and St. Louis Counties.

In addition to a study of these counties and cities an attempt was made to get information from a large number of other counties and a questionnaire[1] was sent to every coroner in the state. This questionnaire was returned by forty-nine coroners. With allowance for overlapping between the returns from the two groups above mentioned, information concerning the operation of the office was secured from a total of sixty-two counties of the state, including the larger and more populous sections.

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[1] See page 570.

In this report we have attempted to supply exact fact information to substantiate each statement made. We have attempted, however, to avoid confusing the reader by the inclusion of many statistical tables. Thus, wherever possible, we have used a straight statement of fact drawn from our body of information. This body of information we hold as substantiating evidence of all of our conclusions. The necessity of reducing the length of this report renders it impossible to include much of the material upon which our conclusions were based.

Wherever possible we have avoided even the appearance of criticising individuals or even individual communities. Consequently, general statements have often been substituted for specific ones. The intention in following this procedure is to keep public interest from bcoming too much concerned in criticisms of individual counties or of officials or in comparisons between counties. The purpose we have in mind in this report, as in all reports of the survey, is to bring out the strong and weak points in a state system and, if possible, to suggest reforms which may have state-wide application.

THE CORONER AND HIS QUALIFICATIONS

In the state of Missouri, the coroner is a constitutional officer. In this respect he ranks with the sheriff, the judiciary, and the clerks of courts. The constitution specifically provides that the sheriff and coroner "shall be elected by the qualified voters in each county" every four years.[1]

The constitution further states that they "shall be eligible only four years in any one period."[2] The coroner, therefore, cannot be elected to succeed himself although he may return at the end of his successor's term. It is not infrequent that the same person serves two or more terms by this method. The present coroners of St. Louis and of St. Louis County served during the term from 1917 to 1921. It happens frequently in rural counties that no candidates for coroner appear at an election and the incumbent continues in office. This was true of nearly a quarter of the counties from which we secured information.[3]

Nowhere in the laws of Missouri are any professional qualifications required of coroners. He need not be a physician, he need not be a lawyer. In practice, however, a large proportion of those who serve in Missouri are medical practitioners. The other calling from which a considerable number of coroners is drawn is that of undertaker. Of those coroners who are now serving or have recently held the office, we have information concerning more than one hundred. The occupations of these men are indicated in the following:

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[1] They shall serve until their successors be duly elected and qualified unless sooner removed for malfeasance in office.

[2] Prior to an amendment to the constitution in 1906, this read "in any one period of six years."

[3] Among the counties for which we have information, this is now true in Atchison, Benton, Madison, Reynolds, Scotland, Nodaway, Oregon, Knox, Webster, Henry. There seems to be no coroner at all in Gasconade County.

OCCUPATIONS OF 105 CORONERS

Physician	68
Undertaker	22
Farmer	3
Barber	2
Dentist	2
Osteopath	2
Collection Agent	1
Music Dealer and Mortician	1
Stockman	1
Lawyer	1
Bowling Alley Manager	1
Candy Maker and Painter	1
	105

This survey is not primarily interested in the personality or qualifications of any specific person or persons holding any office. Consequently, no considerable direct effort was made to determine the professional standing of the physicians holding the office of coroner. It is true that in numerous states of the United States where the office of coroner has been under investigation, the conclusion has been reached that the office was frequently filled by physicians of no professional standing whatsoever. This was especially shown in New York prior to 1916 and in Massachusetts prior to 1876. This fact was a very important reason for the important changes made in the office in these states. In twenty instances we were able to gather reliable opinions as to the professional standing of physicians holding the office. In fifteen cases the report was favorable, in two indifferent, while in three it was distinctly unfavorable. The city of St. Louis, in which, of course, the office is of great importance, has recently been fortunate in the type of physicians who have served.

Another important factor concerning the personnel of the coroner's office is the kind of physicians who are employed to perform autopsies when the coroner himself does not act in this respect. While in the larger cities politics is likely to enter into the designation of these men, the physicians called upon for this service in the rural counties are likely to be the average practitioner who serves as well as he can.

In the last analysis, little is gained by a discussion of the personalities of the men performing the work of coroner in Missouri. If fair ability has been secured, it is more than might be expected under the circumstances. The fact is that the office is nowhere in the state attractive to men of first rate ability. The compensation is negligible, the duties likely to be unpleasant and because the popular attitude toward the office has throughout the United States become one of contempt, the honor is small. There are instances (such as that of the present coroner of St. Louis) where there is a genuine interest in certain aspects of the work or a general interest in public service which draws into the office good and unselfish men. But these are in spite of the well-known disadvantages which the office possesses. The fact that the office in perhaps a quarter of the counties of the state practically goes by default without a contest indicates the esteem in which it is held. Such a condition is a direct invitation to inefficient, slovenly service, and occasionally to grave fraud and dishonesty.

It is obvious, too, that with no legal provision that a coroner be either a doctor or a lawyer there are likely to be innumerable instances of wholly unqualified men serving. The duties are at once legal and medical. When the holder of the office has one of these qualifications he may employ a person who has the other. But there is an obvious incongruity in permitting a person to serve who has the ability to perform neither a judicial nor a medical act. That this incongruity exists in nearly one-fourth of the counties of Missouri is indicated above.

The office should not be held by an undertaker. He must, if his duty is well done, employ a physician for post mortems and a lawyer for presiding over inquests. There is a certain convenience in calling at once the coroner and an undertaker, but the fact that the coroner has jurisdiction over a body gives him, if he is an undertaker, a sort of prior claim upon the family for the "business" of conducting the funeral. The office of coroner thus becomes a "feeder" for the business of the coroner-undertaker. There is, of course, no legal claim upon the right to "get" the funeral and the family of the deceased may employ another undertaker to take possession of the body after the inquest, but in practice the family is likely to employ the undertaker who has possession of the body. This bad mixture of private with public business makes undesirable practices very easy.

THE OFFICE ROUTINE

In Rural Counties.

Usually the coroner is notified of a death coming within his jurisdiction by a constable, deputy sheriff, or by a physician. He then goes directly to the place where the body is lying, observes the condition, learns as much as possible of the circumstances of the death, and notes the available witnesses. Following the ancient practice, he may summon a jury on the spot and forthwith conduct an inquest. He may, however, send the body to an undertaking establishment where, if he deems it necessary, an autopsy or post mortem is held. The inquest, if one is held, may be conducted some days later although a jury must actually see the body and, if possible, be sworn over it. In case the coroner "is unable to take the inquest" it may be held by a justice of the peace or by a judge of a court of record.

The verdict of the jury is required to be returned to the coroner in writing. This verdict is usually written into a legal form used by most coroners. Occasionally the verdict, with all other papers relating to the case, is filed with the county clerk. More often the records are retained by each incumbent of the office with the result that they are often lost and nearly always carelessly kept.

If the coroner deems an inquest unnecessary, he may or may not have an autopsy performed, and after reaching a decision concerning the cause of death, he enters his decision upon a form and releases the body to the relatives. In case the deceased is unknown or a pauper, the burial is at the expense of the county. A fee is allowed for this.

In Kansas City.

In Jackson County the staff of the coroner consists of five members including himself. The chief deputy is a physician who conducts most of the autopsies. Another deputy is a lawyer who presides over and conducts inquests. A third deputy is a physician called an "investigator" who serves subpoenas and makes some investigations. Another staff member called the secretary is a full-time official who conducts most of the routine of the office and acts as stenographer at inquests. In ninety per cent of all cases the coroner is notified by the police. The coroner or the medical deputy visit the scene where the body was found and after "viewing" it, cause it to be removed to an undertaking establishment. In case no autopsy nor inquest is performed, the deputy records the cause of death which is subsequently entered into a permanent record book in the office of the coroner. Inquests are held in the coroner's office in the court house. There is no morgue.

In St. Louis.

In St. Louis the office staff consists of the coroner, the two deputies—one of whom presides in all inquests, while the other is manager of the office, a chief clerk, an official court stenographer, two office stenographers, and a porter. At the morgue is a superintendent, an assistant superintendent, and a porter. As is indicated in the budget on page 100, all of these employees are upon a regular salary basis and do not receive fees.

THE INQUEST

The coroner's inquiry into the causes and circumstances attending a death over which he has jurisdiction is the "inquest." Strictly interpreted this means that such an inquiry must be by the coroner with the assistance of a jury. In practice in Missouri as well as in most other states a jury is summoned only when the coroner thinks it is necessary and desirable. In cases where a death comes to the attention of a coroner and he investigates and reports upon the cause of the same without summoning a jury, his act is commonly called a "viewing."

The decision as to whether a given case should be merely "viewed" or whether an inquest should be held rests entirely with the coroner. His authority is judicial in character and according to the Supreme Court of Missouri he is the sole judge of the propriety and necessity of holding an inquest.[1] Statistics furnished by fifty coroners of the state indicate that in 1925 in about one-third of all cases coming to the coroner's attention, juries were summoned and inquests were held. The tendency is to hold inquests in homicides and in accident cases where there is likelihood of a suit for damages. In perhaps twenty-five per cent of the homicides no inquest was held, however. The omission of an inquest in any case in which the verdict is homicide is of rather questionable legality and if there were any evidence of the value of a jury in any case it would be most unwise.

The laws of Missouri provide that as soon as the coroner "shall have been notified of the dead body of any person supposed to have come to his death by violence or casualty . . . . (he) shall make out his warrant directed to the constable of the township where the body is found, directing him forthwith to summon a jury of six good and lawful men, householders of the same township, to appear before such coroner and to inquire upon a view of the body of the person there lying dead how and by whom he came to his death."

The coroner, after swearing the jury, is required to give them a charge described in the statute as follows. "As soon as the jury shall be sworn, the coroner shall give them a charge, upon their oaths, to declare of the death of the person, whether he died by felony or accident; and if of felony, who were the principals and who were accessories, and all the material circumstances relating thereto; and if by accident, whether by the act of man, and the manner thereof, and who was present, and who was the finder of the body, and whether he was killed in the same place where the body was found, and, if elsewhere, by whom, and how the body was brought there, and all other circumstances relating to the death; and if he died of his own act, then the manner and means thereof, and the circumstances relating thereto."[1]

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[1] Boisliniere v. Co. Com'rs. 32 Mo. 378.

To the inquest may be summoned specific witnesses by means of subpoenas or by "proclamation" which shall call all persons who can give evidence to draw near, and they shall be heard. The evidence of witnesses "shall be taken down in writing and subscribed by them." The coroner, in the case of witnesses giving evidence which may relate to the trial of "any person concerned" in the death shall bind such witnesses by recognizance to appear at the trial "and he shall return to the trial court" the inquisition, written evidence and recognizance by him taken.[2]

The evidence taken in a coroner's inquest may however be used in a subsequent trial only for impeachment purposes.

The jury must return its verdict in writing and the same must be signed by the coroner. In case the inquest decides that the death was the result of a felony the coroner is required to inform one or more justices of the peace or the justice of some court of record who is required to issue his process for the apprehension of such person as is indicated by the coroner.[3]

The purpose and procedure of the inquest is clearly indicated in the foregoing provisions of the statutes. It is intended to further the purposes of the administration of criminal justice by providing a tribunal which can be summoned promptly after the discovery of a death in which homicide is suspected. It is intended that such an inquiry shall have the characteristics of a judicial proceeding with the power to summon witnesses, employ expert assistance, seize evidence, make arrests, and detain witnesses. Theoretically it seems to be an admirable method of bringing the power of the state promptly to bear upon circumstances which may involve a serious crime. Actually, it serves no such purpose. It is, speaking generally, an actual deterrent to the solution of crime problems and the apprehension of criminals. This is due, not to any lack of statutory power but to methods of administration and the circumstances under which the system works.

In St. Louis the inquest is held in the Municipal Courts Building. The jurors are sworn "over the body" prior to the inquest. The inquest may be held on the day of the discovery of the body or later. The coroner or his deputy presides over the inquest and an assistant circuit attorney permanently designated for this duty is present to participate in the questioning of witnesses. A stenographic record is made of all inquests and is filed with the records of the case in the coroner's office. In Kansas City inquests are held in the coroner's office in the court house. Jurors are sent to the undertaking establishments to view the bodies and are subsequently sworn at the inquest. The inquest is conducted by an attorney employed as a deputy coroner. In rural districts inquests are held occasionally where and when the body is found but more frequently at the undertaking establishment where the body is held.

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[1] R. S. Mo. 1919, Sec. 5925.

[2] R. S. Mo. 1919, Sec. 5926-5929.

[3] R. S. Mo. 1919, Sec. 5930-31.

The Inquest as a Judicial Proceeding.

In order to function effectively as a preliminary tribunal in cases involving very serious crimes it is fair to say that certain minimum standards of judicial administration should be present. While opinions may vary as to the nature of these standards the following will perhaps be accepted as not unreasonable.

1. A fair degree of decorum under circumstances which permit evidence to be presented completely and without confusion.
2. A presiding official with some knowledge of the legal rules of procedure and of the value of evidence.
3. An official other than the one presiding who can represent the interests of the state and as such submit questions to witnesses.
4. Jury members fairly representative of the average intelligence of the community selected not because of their need of the compensation given nor because of their own solicitation.

Upon the basis of the evidence gathered as described above, the survey has arrived at the following conclusions concerning the manner in which inquests are satisfying these standards:

1. In St. Louis coroner's inquests are conducted with adequate decorum and in a regular manner. The inquest there is a much more orderly and well controlled proceeding than most of the minor criminal courts in the United States. In Kansas City the opposite was true upon the occasion when the representative of the survey was present. There was little respect for those formalities which should lend dignity and impressiveness to an important judicial proceeding. There was undue confusion. No member of the prosecutor's office was present although the case was one in which the jury "recommended" that the prosecutor "investigate." Of the other counties of the state little can be said of a general nature. The inquests held as they are in an undertaking establishment, by the roadside, or in

the building where the body is found can hardly be expected to possess the requisite decorum or regularity.

2. Except in St. Louis and Kansas City where the deputy coroners are lawyers inquests are generally conducted by the coroners themselves. They are as is indicated in a foregoing paragraph mostly practicing physicians and undertakers. It is not necessary to argue the point that the training necessary to practice these professions is not of the sort suitable as a preparation for a judicial inquiry.

3. Deficiencies on the part of the presiding official may not be serious if there is present proper representation of the state. In 1913 the Legislature passed a law[1] requiring the circuit or prosecuting attorney in cities of 500,000 to attend inquests "in cases of death occurring by violence and which may result in a charge of felony." This is done in the city of St. Louis through the designation of an assistant circuit attorney who attends all inquests. The same section of the statute states that "it shall be the duty of each coroner to promptly notify the prosecuting attorney of his county or city of the time and place of inquisition concerning a death by violence which may result in a charge of felony." Whether this applies to all coroners of the state or only to the coroner of St. Louis has not yet been judicially determined. In reply to the question submitted to coroners as to what cases they deemed of sufficient importance to warrant notifying the prosecutor to be present the replies were in general the same. They usually notify the prosecutor in cases of suspected homicide. In five of the fifty replies the coroner states that he notifies the prosecutor in all cases. Our information indicates that the prosecutor performs his clear duty in attending homicide inquests in no more than one-half of such cases. In ninety-six homicide case records selected for the determination of this point, it is clear in only twenty-six that the prosecutor was present. He might have been present in a few more although his presence is not indicated in the record. It is certainly clear that in no less than one-fourth of homicide inquests outside of the city of St. Louis the tribunal is thus absolutely without adequate legal representation of the state's interests.

4. Coroner's juries according to the statutes must be summoned by the constable of the township when the body is found and must be householders of that township. No qualifications are specified except that they be "good and lawful" men. Where only a few inquests a year are held in a county the spirit of the jury system is undoubtedly kept. Members of juries are actually drawn from those

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[1] R. S. Mo. 1919, Sec. 777.

citizens nearest and most available. In the larger counties there is some evidence of "repeaters." In St. Louis it is quite obvious that there would be some loss of time in summoning an independent jury for each case. The coroner therefore follows the custom of keeping the same jury for a week. An examination of jurymen's names over a period of one year in St. Louis indicates that many jurymen appear in a number of juries during a year but there is no evidence of a group of professional jurymen. It is obvious, however, that the juries in some counties are by no means ideal. Perhaps this is inevitable on account of the unpleasant nature of their duties and the loose manner of choice permitted by the statute. If the survey were convinced that the jury serves any useful purpose it might seem desirable to suggest changes in the system by which a better type of jurymen could be drawn. But this it seems is not necessary as the only possible reform would be the entire abolition of the jury.

5. The statute provides that "the evidence of witnesses shall be taken down and subscribed by them."[1] The coroner is allowed ten cents for every hundred words for taking down testimony at an inquest and twenty-five cents for certifying the same. Fees are also charged by the coroner for extra transcripts of the record which are ordered by attorneys, public utility companies, and others who are interested. In some counties depositions of witnesses are taken instead of a stenographic record of the proceedings. This is more economical for the county and seems to answer the purpose fairly well. In some instances as in St. Louis County, the stenographic record is taken but no transcript is made unless required by some private party or by the county prosecutor.

The widest differences exist among coroners in this matter. In some counties stenographic reports seem to be taken in all cases; in others, in practically none. In St. Louis city all inquests are taken by the coroner's stenographer and transcribed. The transcript is filed with the records of the case.

In the ninety-six homicide cases of which we have a record, there exists a stenographic record in thirty-seven cases and depositions in eighteen others. In the remainder no record was kept except the notations of the coroner.

Value of Inquest in Homicide Cases

A very careful examination was made of the records of all of the homicide cases mentioned above. The purpose of this examination was to determine whether the inquests conducted in these characteristic instances served any useful purpose in the process of fixing responsibility for the crime and of preserving testimony which otherwise might be lost. Our general conclusion is that in no considerable number was the inquest of any value at all in these respects. There is room, of course, for difference of opinion in this matter and our conclusions of necessity must be matters of opinion, but the problem can be fairly well shown by citing a number of these cases as examples.

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[1] R. S. Mo. 1919, Sec. 5929.

Case A. The wording of the verdict in this case was as follows:—"Deceased came to his death from gun-shot wounds from the hands of——————, his wife, a premeditated murder." The testimony offered at the inquest indicated that the deceased had been killed in his home. The parents of the deceased and his wife testified that there had been quarreling during the night. However, there had been no eye-witnesses and no other witnesses who would not have been available to the sheriff or prosecuting attorney. The inquest did not bring out the character of the wounds from which the deceased was alleged to have died, the kind of weapon used is not in the record, nor is the ownership of the weapon definitely fixed. Perhaps the most important omission is in the fact that no autopsy seems to have been made at all. Moreover, it should be noted that the wording of the verdict does not specifically charge the wife with felonious homicide. The wording of the verdict asserting that the murder was premeditated is purely the expression of a vague guess by the members of the jury.

Case B. The verdict in this case was as follows: "H. D. came to his death by a gun-shot wound from a revolving pistol in the hands of J. S. while he, the said H. D., was attempting to enter the dwelling house and place of abode of said J. S., and we, the jury, further find that there was no intent on the part of said J. S. to shoot and kill the said H. D., but we find he would have been justified in so doing." In this case seven witnesses were examined at the inquest but the record does not carry any of the testimony. There was no autopsy. There is no indication that the prosecuting attorney was present at the inquest. There is no evidence as to the size or make of the pistol used. It should further be noted that the verdict is not a clear-cut statement of the cause of death but it drags in opinions of the jury, the expression of which is wholly outside of the legal functions of a coroner's jury.

Case C. In this case a death was caused by "a gun-shot wound," no evidence of the kind of "gun" used is offered and there was no autopsy. The jury has no legal right to hold a person merely for "further investigation" unless the coroner intended that the verdict should be left open. The jury did not state whether the death was found to be felonious or not. There is, of course, no possible advantage to the prosecuting officer in the preliminary work done in a case such as this.

Case D. This is a case in which a man was killed by police officers while resisting arrest. There is absolutely no record of an inquest at all, the verdict being handed down by the coroner. There was no jury, of course. There was no autopsy. In this instance the coroner, instead of stating in his verdict exactly whether the death was a justifiable or a felonious homicide, used a term frequently used in coroners' inquests verdicts in Missouri, that is, "exoneration of the persons who caused the death." There is nothing in the law to justify a coroner's verdict of "exonerating" anyone. Its function is to state definitely whether the homicide was justifiable or felonious.

Case E. In this case a man, according to the verdict, "came to his death by reason of gun-shot wounds inflicted by a person or persons unknown to the jury." The testimony indicated that no evidence was discovered to connect anyone with the crime. The inquest did not place in the record the kind of "gun-shot wounds" which caused the death. There seemed to have been an autopsy but no record of the same was preserved.

Case F. In this case the deceased, according to the verdict "came to his death by reason of drinking poisonous corn whiskey given to him by C. S." In this case an autopsy seems to have been made, also a chemical analysis. The inquest, however, did not place in the record whether the death was accidental or a homicide, nor was any evidence brought out which was not common knowledge at the time. The testimony was given by the wife of the deceased who undoubtedly would have given the same facts to the prosecutor without the formality of the inquest.

Innumerable cases similar to these might be cited. The records of inquests in the scores of homicide cases which we investigated show conclusively that the inquest serves no useful purpose in the prompt gathering of evidence of crime or in the discovery of the guilty. In practically every instance the evidence produced in the inquest could have been gathered by the prosecutor even without the power to subpoena witnesses and to get evidence. Moreover the opinions of prosecutors themselves indicate that the coroner's inquest serves no useful purpose in the preparation of the state's case against murderers. They receive no important assistance from it at all.

There is, moreover, ample evidence of the fact that in many cases coroner's inquests, as now conducted, constitute a positive interference with the preparation of cases by prosecutors. They bring out publicly, in a very inadequate and clumsy manner, witnesses and evidence which prosecuting officers would prefer to keep temporarily secret. Defendants are given the opportunity to discover the character of evidence which they will be compelled to contest in the subsequent trial.

THE AUTOPSY

An autopsy (commonly called post-mortem) is according to Black's Law Dictionary "the dissection of a dead body for the purpose of inquiring into the cause of death." The statutes permit the coroner to call upon a physician or surgeon to perform an autopsy and for this service the county court may allow a fee of not over ten dollars. If the coroner is a physician and he shall conduct an autopsy he "may be allowed an additional fee if not over twenty-five dollars." The discretion of the coroner in requiring autopsies is limited however by the provision that "unless it appears to the court that the coroner had reasonable cause" to suspect violence or casualty the autopsy fee shall not be allowed.

In St. Louis autopsies are performed by one of a group of eight physicians. These physicians have no tenure of office but are called by the coroner for each individual case. These physicians have served the coroner for several years, one of them, Dr. T. C. Carriere, having performed autopsies for the various coroners for twenty years. Dr. R. B. H. Gradwohl is retained wherever microscopic or chemical examinations are to be made. The autopsies performed for the coroner of St. Louis are thoroughly made and quite adequate records are made of each. Autopsies are not only invariably made in cases of possible homicide but in practically all other cases of violent death.

In the other counties of the state the autopsy is the exception rather than the rule. In the reports from the coroners themselves it appears that of all cases reported for 1925 autopsies were performed in *less than ten percent.* Of homicides reported the average was forty percent. In the ninety-six homicide records almost two-thirds indicated no autopsies while in the thirty-three autopsies alleged to have been performed only three were recorded on a proper form. In this respect as in many others in this survey of the coroner's office some counties rank much higher than others. In one county care seems to have been exercised to have adequate autopsies performed in all homicide cases and in a fair proportion of others. On the other hand, in one large county out of a large number of homicides there seem to have been absolutely no autopsies. In one respect practically all counties are very lax. Even in cases where an autopsy is alleged to have been made no record of it is filed with the record of the inquest. This reflects either a very careless and superficial examination of the body by the physician or a grave omission in keeping the records of important cases.

The fact is that almost astounding carelessness is generally practiced. Undertakers who hold the office of coroner often make their own post-mortems. One instance of this indicates the grotesque character of such a procedure. A coroner-undertaker pretends to distinguish between lobar and bronchial pneumonia on his own examination. Scores of instances are on record where "heart trouble" is alleged as the cause of death with no indication of evidence to that effect other than the fact that the deceased died suddenly.

In addition to the serious situation created by the fact that no autopsies are performed at all in scores of cases where they are certainly needed, there is the further fact that when they are performed they are too often done by untrained and unskilled physicians working without adequate facilities. In this connection Dr. R. B. H. Gradwohl, a pathologist of standing, familiar with the best practices in the United States and Europe, said in an article written in 1910, after having had intimate contact with the coroner system in Missouri:

> "One would never suspect that there was anything scientific about the conduct of a legal autopsy if he were to observe this work as it is done in most coroners' offices. In most localities there is practically no provision made for the proper performance of an autopsy. We see them conducted in barns, in livery stables, in private homes, in so-called 'mortuary' rooms of hospitals and undertaking establishments, with hardly enough facilities for washing the hands of the operator, much less for accurately scrutinizing disease and abnormal conditions in all their devious and obscure manifestations. The so-called 'morgue' of the average coroner's office is too often a place of resort for the morbidly curious to peer through glass windows at unsightly cadavers. The autopsy room in the so-called morgue of the average coroner's office is a huge joke, as a rule, on the very name it bears. There is sometimes at hand an operating table and perhaps running water, but one looks in vain for a weighing machine, a photographic apparatus, a microscope, a laboratory table, bacteriologic apparatus, test tubes, slides and cover-glasses of which even the humblest hospital laboratory boasts. In short, there is absolutely no possibility of anyone, no matter how expert he may be, performing all the different manipulations of this autopsy work in a manner satisfactory to the trained pathologist. The position of autopsy physician is seldom held by a pathologist, and, if it is, he has great difficulty in doing his work properly under the circumstances already detailed."

THE VERDICT

The charge which the statutes of Missouri require the coroner to give to the jury indicates in a general way the subject matter which a verdict should contain. A verdict should most certainly indicate the following important facts:

1. The exact medical cause of death.
2. Whether the death was the result of felonious or justifiable homicide, accident, suicide or natural causes.
3. If by felony, the immediate circumstances, and if possible the persons or person responsible for the crime.

An examination of hundreds of verdicts included in this survey indicates that, outside of St. Louis, it is rare that a verdict is a satisfactory statement of these important facts. As we have already indicated, so few autopsies are performed that in scores of cases the pathological cause of death set forth is the roughest sort of guess by a jury or a coroner utterly incompetent to determine the cause of death. In many cases, such a guess is "heart failure" or "heart trouble," a description of the cause of death which is usually not acceptable if it appears upon a death certificate. A cause of death is occasionally set forth unaccompanied by any evidence that an examination has been made by any medical practitioner, in cases where the cause alleged could not possibly have been determined except by an autopsy accompanied by a microscopic examination. In scores of cases the cause of death is set forth unaccompanied by any facts which would indicate the circumstances attending death. Homicides are reported so vaguely that no recording agency could possibly determine how many murders are actually committed in the state in any given year.

The following verdicts, copied from the official records in a number of counties, are not exceptional. They are, in fact, fairly typical of the "descriptions" of death provided by the present system. It is evident from these examples that the most primary requirements of the law are not met by the coroner's system as it now operates:

A1... "the death of this man, whose name is unknown to us, was the result of natural causes, largely brought on by his advanced age" . . . (No autopsy.)

A2... "came to his death from cause unknown to us" . . . (No autopsy.)

A3... "by taking carbolic acid with suicidal intent." . . . (No autopsy.)

A4... "Deceased came to her death by an unavoidable accident." (No autopsy.)

A5... "Committed suicide on Aug. 17, 1924, at 7 o'clock A. M." (No autopsy.)

A6... "Cause of death probably Premature Birth." (An autopsy was performed in this case by a physician who evidently was ignorant of the fact that a definite test exists which would definitely determine the cause in such a case.)

A7... "Death due to natural causes, no suspicion of violence among the neighbors, death probably due to Broncho-pneumonia." (Autopsy said to have been performed.)

A8... "So far as I could ascertain I found She came to her death from A natur cause comenly caled hart failure and I found no cause to Suspect Eny foul play" . . . (No autopsy.)

A9... "Death probably due to natural causes." (No autopsy.)

A10.. "I lerned the man while Under the Enfluence of Whiskey or white mule Just willfully drowned himself." (No autopsy.)

A11.. "the deceased came to her death by Septicaeaimia and not from any medicine given By Any Doctor." (No autopsy.)

A12.. "died suddenly without receiving medical attention. Deceased was Very fleshy and died probably from heart disease." (No autopsy.)

A13.. "I make declaration that deceased came to his death from apoplexy or causes to me unknown." (No autopsy.)

A14.. "A jury was not had, but after careful examination of the body . . . my declaration is that deceased came to his death from acute alcohol poison." (No autopsy.)

A15.. "the deceased came to her death by Natural Causes Unknown." (Autopsy.)

A16.. "the deceased came to her death by some form of heart trouble." (Autopsy.)

A17.. "We the Jury, having been duly sworn diligently to inquire and true presentment make, in what manner and by whom ————, whose dead body was found at Near his home, came to his death, after having heard the evidence and upon full inquiry concerning the facts, and a careful examination of said body, do find the deceased came to his death By Natural Causes unknown to Jury." (No autopsy.)

A18.. "from Natural Causes, probably heart trouble." (No autopsy.)

A19.. "Came to his death by heart failure or some unknown cause, other than foul play." (No autopsy.)

A20.. "Deceased came to his death from Natural Cause." (No autopsy.)

A21.. "We the Jury find that the deceased cause of death was due to Heart Failure." (No autopsy.)

A22.. "We the Jury . . . find that he came to his death from cause unknown but believe he died from heart failure." (No autopsy.)

A23.. "We the Jury believe the death of desieced . . . was caused by hart troubl for as we know." (No autopsy.)

A24.. "We the Jurors after examining boddy and hearing Evedence find the decesed . . . came to his death by cause unknown to us." (No autopsy.)

A25.. "died suddenly while in office of Dr. J———— deceased came to office at noon and the doctor was out at time. The cause of death was from natural Causes . . ." (No autopsy.)

A26.. "H. K. fell dead at his home—aged 78 yrs. Deceased had not been sick prior to his death. The Cause of Death was unknown due to natural cause." (No autopsy.)

A27.. "found dead in bed by neighbors when she did not get up following morning. . . . The Cause of Death was unknown due to natural causes . . ." (No autopsy.)

THE UNDERTAKER PROBLEM

Whenever in the United States the coroner's office has been subject to investigation there has appeared in a more or less malignant form the problem of the relation of the office to private undertakers. In the investigation of the office of coroner in New York City[1] in 1914 it was found that coroners habitually exercised their official power to get business for favored undertakers. It is of course comparatively easy for a coroner to secure such business for an undertaker because the family of a deceased person is likely to employ an undertaker who has already come into possession of the body through being called by the coroner. It is, moreover, possible for an undertaker who is willing actively to solicit business to go to the relatives of the deceased and ask to continue in charge of the body after the "viewing" or inquest.

While it was not the purpose of this survey to ferret out "graft" in this respect nor even to point specifically to undesirable practices, it is perfectly evident that the present system permits every sort of evil which has appeared in other states. In half of the rural counties which we investigated the coroner had a preferred undertaker always employed to transport and hold bodies. In all others the coroner called the one who was most convenient. The undertaker called usually carries the body to his mortuary and after the inquest he delivers it to some other undertaker employed by the family or prepares it for shipment. We have already referred to the danger that a coroner who is also an undertaker may use his office to "feed" his business.

In Kansas City, an approved list is made up by the coroner. Upon this list, according to the present coroner, there are about fifteen names. Of these there are three negro undertakers while among the others, nationality and religion are recognized by including "one Italian, one Jew and one Roman Catholic" undertaker. Some degree of selection is made in calling an undertaker in accordance with the above national, racial, and religious categories, while some reference is made to the location of the body. But in general, an attempt is made to distribute cases fairly equally among the group. Inclusion in this preferred list by the coroner is very important to the undertakers concerned.

The coroner of St. Louis has had an agreement for several years with the A Undertaking Co. by which it conveys bodies to the morgue for a set fee of $2.50. It is also employed to bury bodies in the potter's field. Three alternates are also retained—B, C, and D Undertaking Companies. Bodies of negroes are taken to the morgue by the E Undertaking Company. About one-half of the bodies taken to the morgue are carried by the two officially designated undertakers. The coroner requires the nearest relative to indicate his choice of an undertaker in writing; the body is then released from the morgue to the undertaker designated. This precaution is taken to minimize the evil of undertakers soliciting business too vigorously. There is nothing, however, to prevent the undertakers employed by the coroner from using their prior knowledge of the death "to get the funeral" from the family, and while no direct evidence of such solicitation was sought the large number of bodies taken from the morgue by the undertakers employed by the coroner to bring them there raises a strong presumption that they secure preference in some manner. In order to determine this the survey carefully noted the undertakers employed when a body was removed from the morgue in every case in 1924 and in three months of 1925. The results of this compilation indicate that the A Undertaking Company removed eighty-nine in 1924 and in three months of 1925. The largest number removed by any company not connected with the city in the same period was fifty-four, while the average undertaker appears not over twelve times. Another way to measure this tendency is a comparison of the number of bodies removed by the E Company in January, February, and March 1925, with the number removed by the same company in all of 1924. The E Undertaking Company was employed shortly after the new coroner came into office to care for the transportation of bodies of negroes to the morgue, displacing the F Undertaking Company which had done this in 1924. While the E Company had taken only four bodies in all of 1924, the number rose to twenty-four in the first three months of 1925. On the other hand, the F Company which had forty-three such cases in 1924 fell to three in 1925. This seems to indicate quite clearly that there is some relation between the designation of a certain undertaker to perform city business and the subsequent selection of an undertaker by the relatives of the deceased. This relation is probably inevitable in the coroner system when the city does not possess the facilities to transport all bodies to the morgue without calling a private undertaker. When the new municipal mortuary is completed it is to be hoped that the coroner's office will possess its own means of transporting bodies to the morgue in all cases and that strict supervision will prevent any private undertaker from appearing until the inquest has been completed. Such a system operating under the medical examiner in Boston has completely eliminated the undertaker problem.

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[1] Report on Special Examination of the Accounts and Methods of the Office of **Coroner, New York City, by L. M. Wallstein, Commissioner of Accounts.**

The same sort of a municipal mortuary should be provided in Jackson County as is now being constructed in St. Louis. The undertaker problem there should be met in the same manner as is suggested for St. Louis, that is, adequate provision for transporting bodies by a city or county conveyance.

The Cost of the Office

Except in certain of the larger counties the coroner in Missouri is a fee office. When the coroner is a physician he may be allowed not over $25.00 for a post mortem examination—the exact amount to be fixed by the county court. The amount allowed varies, but the average is perhaps not much more than $10.00. A fee of $5.00 for viewing a body is also allowed. A coroner is also allowed 10c. per 100 words for taking down testimony in an inquest and 25c. for certifying the record. Other small fees permitted for mileage, for swearing the jury, for issuing subpoenas and for other acts are allowed. The total compensation of the coroner as well as the cost of his office is shown in a few typical counties in the following table. The figures are for the year 1924.

TABLE II

The Cost of the Coroner's Office in Six Typical Counties

County	Population	Personal Fees for Coroner	Other Fees for Jury, Witnesses, etc.	Total Cost of Office
Scotland	10,700	$36.51	$44.50	$81.01
Phelps	14,941	73.10	22.00	95.10
Livingston	18,857	8.24	69.10	77.34
Franklin	28,472	186.50	193.16	379.66
Boone	29,672	143.19	158.30	301.49
Marion	30,226	173.94	252.25	426.19

Upon the basis of complete records from fourteen counties for the year 1924, the average cost to the county of a case in which an inquest with a jury is held appears to be about $22.00; in cases in which no formal inquest is held the cost in fees is under $10.00. The average does not vary much from county to county. It is a safe inference to draw from the above table that nowhere in Missouri except in the five most populous counties does the coroner receive much over $200 per year in actual compensation, and the total cost of the office is probably not over $500.

In St. Louis County the coroner receives a salary of $3300 a year. This amount is fixed by the county court which is limited to $4000 by law. The total amount paid by the county in fees in 1924 was $2528.25. The cost of the office per inquest in St. Louis County was nearly $40, while in the first four months of 1925 it was approximately $43—a sum well over twice as high as the average in rural districts operating under the fee system.

In St. Louis the expenses of the coroner's office are carried in the city budget. The following are the items provided for the year 1925:

The Coroner (City of St. Louis)

For Salaries, Wages, etc:		
Coroner	1	$ 3,500.00
Deputy Coroner @ $2,580	2	5,160.00
Clerk	1	1,980.00
Official Stenographer	1	2,400.00
Ass't Stenographer @ $1,356.50	2	2,713.00
Porter & Messenger	1	1,140.00
		$16,893.00
Special Services:		
Jurors and witnesses	....	$4,000.00
Undertakers	....	1,000.00
Post-Mortems	....	12,000.00
Circuit Attorney attending Inquest	....	6,000.00
For Supplies and Expenses:		
Printing, Stationery & Office Expenses	....	$700.00
Furniture & Fixtures	....	50.00
		$40,643.00
Morgue:		
For salaries, wages, etc.:		
Superintendent	1	$2,100.00
Ass't Superintendent	1	1,680.00
Porter	1	1,200.00
		$4,980.00
Special services—Undertakers	3	1,000.00
For Supplies and expenses (Itemized)	....	1,110.00
		$7,090.00

In Kansas City the coroner receives a salary of $3000 a year and in addition is allowed a fee for certified copies of the record. His annual income from salary and fees is probably under $4000. The chief deputy receives $2100, the legal member of the staff $1800, and the other two staff members $1500 each. One of the latter acts as secretary of the office and as official stenographer. He receives in addition to his salary all fees received from insurance companies and others who require a copy of the record of inquests. In all, he probably receives an annual compensation of between $3500 to $4500. The total direct cost of the office to the county is about $12,000.

It should be noted that the law permits the incumbent of the office to engage in another occupation and the coroners of St. Louis and Kansas City both continue the active practice of their profession.

Other Aspects of the System

As is noted above, this survey has viewed the coroner system almost exclusively from the standpoint of its significance in the criminal process. We have given small attention to two other aspects of the coroner's function which are of supreme importance. One has to do with the relation of the office to insurance, and the other to personal liability cases. A blundering, careless inquest which, as is often the case, "exonerates" the person who caused an "accidental" death, may become an important factor in a subsequent suit for damages. A verdict which is unduly favorable to an insurance company may be rendered. There are possibilities for irregularity in connection with such cases which are most serious. To avoid the danger of irregularities, the determination of the causes of death in coroner's cases should be made by highly reputable and adequately skilled persons.

THE MASSACHUSETTS SYSTEM

By 1876 the coroner's system had fallen into disrepute in Massachusetts and a serious public scandal made it possible to bring sufficient pressure upon the legislature to secure an entirely new system for the state. The Massachusetts Medical Examiner Law[1] of that year with some slight amendments stands today as perhaps the most satisfactory answer to the coroner problem. Space does not permit an extended discussion or explanation of the Massachusetts system here so we shall set forth only its fundamental characteristics:

1. A medical examiner and associate medical examiners are appointed by the governor of the state for each county except in Suffolk County (Boston) where two are provided. The term is seven years and there is no limitation upon continuity of service. In practice the governor usually continues the incumbent as long as he cares to serve. Politics in such appointments practically does not exist.

2. Medical examiners must according to the statute be "able and discreet men, learned in the science of medicine." This means in practice that they be licensed medical practitioners. In Suffolk County, a salary of $5000 is allowed, in other counties fees are allowed.

3. Judicial and police functions are absolutely separated from medical functions. The medical examiner is required to answer as to the immediate cause of death. The conducting of the inquest is beyond the power of the medical examiner. He is required by law to make examination of dead bodies of such persons as are supposed to have died by violence. If after having viewed a body he considers it necessary he shall upon the written authorization of the appropriate district attorney, mayor or selectmen make an autopsy before witnesses. If his examination leads him to the conclusion that the death was caused by the "act or negligence of another" he must file a report of his examination with the district attorney and a justice

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[1] Mass. General Laws, Chapter 38.

of a district court or a trial justice within the jurisdiction. Having thus submitted his report as to the medical facts concerning the cause of death his responsibility ends. Further examination rests with the district attorney and the justice notified. The latter holds the subsequent inquest at which the district attorney may be present. The judge or magistrate must file the report of his inquest in the superior court of his county. Thus the law contemplates vesting medical functions in the medical examiner and magisterial functions in a magistrate.

4. The medical examination is required by law to be made with great care. In a case, in which the average coroner in Missouri would content himself with the statement "killed by gunshot wound in head," a Massachusetts medical examiner would conduct an examination, the report of which would cover five or six typewritten pages. There would be made careful examination of all the organs of the body, all physiological factors would be noted, careful measurements taken and (usually) photographs made. For example, in Suffolk County, in the case of a murdered Chinese laundryman eight photographs were attached to the record. These included three of the interior of the shop in which the body was found and five of the body itself. The advantage of this in any subsequent prosecution is obvious. No use of the camera in conducting examinations in Missouri is ever made so far as the survey was able to determine.

The coroners of Missouri themselves will agree that on account of the decline in public esteem which their office has suffered it has become more of a liability than an asset for a physician to serve. The office often goes begging—often no candidates appear at an election for such an empty honor. That under a rehabilitated system the office cannot only become a highly honorable one but can attract the best talent is indicated by the example of Suffolk County, Massachusetts. One of the two examiners there has served since 1910; the other since 1907. In forty-eight years only five men have held these offices. One served thirty years, another twenty-eight. Dr. Draper who resigned in 1905 was the author of a text on legal medicine and a professor in the Harvard Medical School. Both of the present incumbents are members of medical school faculties. One of them, Dr. G. B. Magrath, is a pathologist of distinction and a member of the faculty of the Harvard School of Medicine. He is called in consultation in many important cases throughout New England and the East. These examples which might be multiplied indicate the possibilities present in the office which has been permitted to decay in most of these United States.

IMPROVEMENTS ELSEWHERE

In the city of New York the ancient coroner system persisted until 1915. At that time John Purroy Mitchel, reform mayor of the city, caused an investigation of the office. Scandalous conditions were discovered and as a result the legislature abolished the office of coroner in the five counties comprising the city of New York. There was created instead the office of medical examiner for the entire city. This medical examiner is appointed "without term" by the mayor from the classified service. He must be "a doctor of medicine, and a skilled pathologist and microscopist." He appoints his own subordinates. No inquests are held, the medical examiner making his report upon deaths to the district attorney whose duty it then becomes to proceed with whatever investigation or prosecution he deems proper. Political influence has been kept out of the office during the ten years of its existence; the same medical examiner has remained in office in spite of changes in the administration of the city. Records are adequately kept and violent deaths, especially homicides, are subjected to immediate and scientific investigation.

As a result of a growing public realization of the evils and deficiencies of the old coroner system, a number of states have attempted its reform. Vermont, New Hampshire, Connecticut and Rhode Island, influenced by the example of Massachusetts, have adopted modified forms of the medical examiner system. In Connecticut, for example, county coroners are now appointed by the judges of the Supreme Court and a medical examiner is appointed by each coroner. In Rhode Island medical examiners are appointed by the governor and coroners are appointed by town councils. Vermont has a state pathologist who performs autopsies for the whole state. In Nebraska by a law passed in 1907 each large county has a "coroner's physician" who is on a salary and who performs autopsies. New Mexico has no coroner and inquests are conducted by justices of the peace. In 1919 Michigan provided an improved coroner's system for Wayne County with higher qualifications, a better salary and more adequate staff for the coroner. Many attempts to reform the system in Ohio and Illinois have not succeeded.

It should be noted here that in some states the organized medical profession have supplied initiative for the reform of the coroner system. Medical men in many states have felt keenly the disgraceful condition which the present system has permitted and the absurdity of non-medical coroners passing upon pathological questions of great public importance.

THE CORONERS' IDEAS OF REFORM

In order to secure from the coroners themselves their ideas concerning changes which should be made in the laws governing the office and its administration, two questions requesting such opinions were included in the questionnaire sent to all coroners. These were:

> Would you favor some provision by the state for post mortem and other technical services?
>
> Have you any other suggestions for changes in the laws or for improving the system relating to coroners?

In reply to the first of these questions there was an overwhelming sentiment in favor of such provision. On thirty-eight of the forty-nine questionnaires returned, this question was answered. Thirty-one of these answered in favor; seven were opposed. One favored having the state provide for chemical analyses but did not favor state provision for post mortems.

In answer to the second question above, fifteen stated that there should be higher fees or salaries. The other suggestions were the following:

> "Abolish the coroner's jury."
>
> "The governor should appoint a physician in each county to perform autopsies."
>
> "There should be a more specific law compelling witnesses to testify."
>
> "There should be more strict requirements to investigate deaths occurring without medical attention."
>
> "The constitutional provision making coroners ineligible to succeed themselves should be repealed."

THE MEDICAL EXAMINER SYSTEM IN MISSOURI

There is most urgent need for the establishment of a modified form of the Massachusetts system in Missouri. We have pointed out in describing the Massachusetts system that there should be a clear differentiation between the functions that are medical and the functions that are judicial. The determination of pathological causes of death is a medical function. It does not describe, except incidentally, the circumstances attending the death which were external to the body of the deceased. It does not seek to fix personal responsibility for a violent death. The medical findings of a medical examiner constitute testimony in a judicial proceeding but they are not in themselves judicial determinations. These findings, which we shall call medical, are to be distinguished from judicial findings.

Medical findings in all cases which are now designated as "coroner's cases" should be made by a medical examiner selected because he is skilled in the science of pathology. There should be one such medical examiner in each county. He should be selected by the governor for a term of years perhaps not less than seven. In making such selections the governor should be guided by advice from medical associations, outstanding leaders in the medical profession and others competent to judge of the qualifications of such an official.

In making the selection of a county medical examiner, certain qualifications formulated at the request of the survey by two trained and expert pathologists of this state[1] should be insisted upon. These qualifications include:

1. Graduation from a Class A medical school.
2. Interneship in an accredited hospital for a year.
3. An experience in performing autopsies over a period of at least two years under competent supervision with an abundance of autopsy material available.
4. Proper facilities for the performance of an autopsy, with provision for bacteriological, chemical and photographic assistance.

In the larger counties a fixed salary should be paid, in the smaller ones an adequate fee for each autopsy. Such a fee should be not less than $30 for an autopsy and $5.00 for a viewing. This is only slightly higher than the fees now allowed by law. The county courts, however, do not often permit fees as large as are permitted by law. The legislature should make the higher fees mandatory.

Some difficulty would be encountered for a time in finding physicians adequately trained to meet the qualifications above described. The number of pathologists is small and facilities for training inadequate. The demand, however, created by the adoption of the medical examiner system would have the effect of stimulating such training and the medical schools would find it desirable and necessary to provide for it.

The powers and duties of a medical examiner should be similar to those of the medical examiner in Massachusetts and New York. He should be summoned immediately in all cases of violent death, or death without medical attention. He should take charge of bodies in such cases and make examinations of them, holding an autopsy if he deems it necessary. He should make a complete record of such examinations and file copies of such records with the prosecuting attorney and with the coroner in case the death seemed to have been caused by the act or negligence of another. An inquest, if the coroner deems it necessary, should be held and the medical examiner may be summoned as a witness at such inquest.

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[1] Drs. Ralph Thompson and R. B. H. Gradwohl.

The custody of all bodies in such cases shall be had by the medical examiner, and in counties where there is a morgue, he shall have charge of the same.

Dr. Gradwohl, in the paper to which we have already referred, has pointed out the following special advantages of the medical examiner system.

> "And, above all, I wish to call attention again to the recognition of the work of the autopsy physician under the medical examiner system as compared with the lack of recognition when he is a mere subordinate of the coroner's office, a subaltern in the ranks, though bearing on his shoulders responsibilities fully equal to any which are assumed by medical men in any branch of practice. In attempting to perform his work he is absolutely compelled to decide the question of the cause of death, on which often depends the life and liberty of accused individuals, under the most serious and almost insurmountable difficulties. Under the Massachusetts system an examiner may perform his duties in a most painstaking and scientific manner, backing up the result of his gross findings with the data elicited by histologic and toxicologic and bacteriologic methods carried to full completion in a well-equipped and well-protected laboratory. In view of the importance of the facts to be gleaned from a legal autopsy, and the fact that in but few instances are there facilities for the qualified expert to do his work properly and that in most instances the work is done by "slattern" pathologists, who have but little training and with no overseer or expert director, truly it is a marvel that justice can ever be done in any case that must be developed through the kindly but woefully inexperienced agency of the coroner's autopsy physician.
>
> "The Massachusetts system practically makes it imperative that the sole *raison d'etre* of the medical examiner's employment shall be good autopsy work. It eliminates, by turning the fierce white light of publicity and conspicuity on this office, the possibility of performing autopsies in the "cut-and-slash," or "hit-and-miss" fashion of the average coroner's office, where but a bare semblance of exactitude in observation and description of pathologic change is carried out."

A State Pathologist

There should be created in connection with the medical examiner system just described the office of state pathologist to be appointed by the governor for a long term and at an adequate salary. The duty of this officer should be to assist medical examiners in difficult and important cases, to give consultation in autopsies, to perform chemical and microscopic examinations when called upon by county medical examiners and to standardize practice among medical examiners in line with the most modern scientific methods. It is easy to see that the opportunity for leadership among the medical examiners of the state which such a state pathologist would possess should call for this office first rate ability.

THE JUDICIAL FUNCTION OF THE CORONER

Ultimately the office of coroner should be abolished. Until this can be accomplished, the office should retain its judicial functions with certain limitations imposed by the creation of a medical examiner system. The determination of whether an inquest should be held should rest with the coroner after the medical examiner has reported to him his medical findings. The coroner, therefore, will not be the first official to be notified of a death by violence or without medical attention. The medical examiner should be first on the ground. As soon after the medical examination as is possible the coroner should receive a complete record of the medical findings, and if it seems to him advisable the coroner should hold an inquest, examining witnesses, collecting evidence, and, if the facts warrant it, detaining witnesses or persons who may be suspected of a crime. The custody and disposition of the body should be under the jurisdiction of the medical examiner.

The coroner should hold inquests without a jury. There is absolutely no need for a coroner's jury. It is an unjustified expense to support such a cumbersome and inefficient investigating body. At present its existence permits the coroner to escape responsibility for arriving at the important decision as to the cause of death. The coroner already may subpoena witnesses, examine them, and make a record of their testimony. He may place persons in custody, or take their recognizances. All of these powers could be retained, and would furnish adequate authority to conduct an inquest and bring in a verdict. The reason for using a jury in an inquest is historical rather than logical and necessary. It dates back to an age when there were no responsible state prosecutors and a person, if brought to trial at all, had to be accused by a jury of his townspeople. At the present time, the Grand Jury as an indicting agency has practically passed out of existence in Missouri, and the coroner's jury should follow.

In conducting inquests, the coroner should give the families of the deceased the right of counsel, and they should be completely advised of all of their rights in such an inquest. This would to some degree eliminate the scandalous condition which now permits certain persons to use the inquest as a means of lessening their liability in cases of accident.

Whenever, under the system proposed, the medical examiner would report an examination to the coroner a copy of the same should go to the prosecutor also. The prosecutor should be required by law to be present at all inquests, either in person or through a deputy.

When the coroner is ultimately abolished, the medical examiner should report his medical findings to a designated judicial officer and also to the prosecuting officer. The court could then, as in Massachusetts, conduct the inquest.

SUMMARY

Conclusions.

1. The coroner's office is a product of medieval conditions and has changed very slightly in functions during the centuries in which it has existed in England and America.

2. In Missouri its legal status remains almost entirely unmodified by recent legislation.

3. There are practically no legal qualifications required of coroners and a large proportion are not physicians. In many instances the office has become a mere adjunct to the business of private undertakers.

4. Physicians employed by the coroners to perform autopsies are, with a few notable exceptions, wholly without qualifications for the important work which they perform.

5. The holding of the office by an undertaker is particularly undesirable. Not only is an undertaker usually utterly without qualifications but the business advantage which he gains from the office furnishes an incentive for seeking the office which is undesirable.

6. The inquest is, as a general rule, without value in determining the cause and circumstances attending death. Moreover, as it is now conducted it does not possess the first requirements of a judicial proceeding.

7. Verdicts as determined by coroners' inquests are generally wholly inadequate descriptions of the cause of death and in many cases do not comply with legal requirements.

8. Autopsies are performed regularly in St. Louis but in most of the counties of the state they are the exception rather than the rule. In many instances no autopsy was performed in cases where the demands of justice made it obviously necessary. When

performed they are usually done without adequate skill and with inadequate facilities.

9. Relations now existing between coroners and undertakers in many instances are most undesirable and constitute a problem of serious proportions. The power of the coroner to give undertakers "business" is, to say the least, a possible source of very undesirable practices.

10. The Massachusetts medical examiner system is the most satisfactory method of solving the coroner problem which has yet been found.

Recommendations.

The committee which considered this report discussed the question of whether the survey should set forth two sets of recommendations, one a group of fundamental changes in the entire system, the other a group of minor changes in the existing system which might be a slight improvement over the present system. It was decided that the latter type of recommendations would be so inadequate to reach what is unquestionably a serious problem that nothing short of a complete fundamental change should be suggested. The following recommendations, therefore, contemplate a complete re-organization of the function of medical examinations and inquest procedure. They are in the main based upon the Massachusetts system with such modifications as conditions which exist in Missouri suggest as necessary and desirable. In brief, they are the following:

1. Ultimately the office of coroner should be abolished. On account of the fact that it is a constitutional office, however, it is not likely that such a change can be accomplished soon, and meanwhile it should be shorn of certain functions which should be vested in a medical examiner, who should be allowed to exercise all of the powers of summoning witnesses and taking evidence under oath which he now possesses.

2. The medical examiner, in large centers of population, should be paid a fixed salary sufficient to draw to the service expert pathologists. In all other counties the medical examiners' fees should be increased.

3. The function of medical examination now possessed by the coroner should be vested in medical examiners with qualifications such as are described in the foregoing report. There should be one medical examiner for each county except for the City of St. Louis, in which there should be two. They should

be appointed by the governor for a term of seven years or during good behavior with removal only for cause. It is probable that the latter suggestion is best because it emphasizes its permanence and non-political character.

4. The judicial function represented in the inquest should be exercised by the coroner.

5. In cases where the medical examination should reveal that death was caused by the act or negligence of another, the medical examiner should file copies of his findings both with the coroner and with the county prosecutor.

6. The Coroner's jury should be abolished.

7. There should be a state pathologist appointed by the governor.

8. A municipal mortuary should be provided in Kansas City, similar to the one now under construction in St. Louis.

9. The coroner's salary and fees should be adjusted on account of the changes proposed in the foregoing recommendations.

PART III

PREPARATION AND PRESENTATION OF THE STATE'S CASE

By

ARTHUR V. LASHLY, LL.B.
Formerly Prosecuting Attorney St. Louis County
Member Missouri Constitutional Convention, 1922-1923

ADVISORY COMMITTEE

Edw. J. McCullen	St. Louis
Judge Thos. B. Harvey	St. Louis
Senator Frank Hollingsworth	Mexico
Frank J. Duvall	Clarksville
Bert S. Kimbrell	Kansas City
Former Atty. Gen. J. W. Barrett	St. Louis

PREPARATION AND PRESENTATION OF THE STATE'S CASE

The Supreme Importance of Prosecution

The very heart of the criminal process is the prosecuting office. Its power over the life of a case is practically without limitation. The prosecutor[1] may prosecute or refuse to prosecute. No prosecution may start until he files his information or until the grand jury finds a true bill. The grand jury, seldom used in initiating prosecutions, is in fact dominated by the prosecutor. He may bring the efforts of the arresting officer to an end by refusing a warrant. After the preliminary hearing he may, if the defendant is discharged, revive the case by filing an information in the circuit court, and if the defendant is bound over he may terminate the action by refusing to file an information or to present the case to the grand jury. At any stage before the trial jury is sworn he may on his own responsibility nolle pros. the case and if the jury is sworn his recommendation is usually followed by the court. After conviction or upon plea of guilty the court usually depends upon the prosecutor's advice in fixing punishment. Finally, the authorities sometimes consult him in the granting of pardons, paroles and commutations. Thus the influence of the prosecutor in the criminal process is continuous, and in most stages decisive.

The duty of representing the state and prosecuting criminal cases in Missouri falls upon the public prosecutor, designated as the prosecuting attorney. In the City of St. Louis an exception is made in that there we have a circuit attorney who handles the grand jury and felony cases in all stages. The "prosecuting attorney" in that city prosecutes only state misdemeanors and appeals taken from the city courts in cases of violations of city ordinances which are tried on appeal in the Court of Criminal Correction.

The Historical Development of the Office

There has been a chief prosecuting officer in England for centuries whose duty has been the prosecution of crimes and misdemeanors. He is the legal representative of the crown in the courts. The administration of prosecution is now vested in the attorney general, a member of the cabinet, whose tenure depends of course upon the political tenure of the government. Under him, however, is a permanent official known as The Director of Public Prosecutions. Prosecutions throughout England are conducted under his direction and to this extreme centralization of control, with its consequent protection of the prosecuting officer from local influences, is probably due much of the efficiency of prosecution in England.

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[1] Where this word is used in the succeeding pages it refers to the public prosecutor and should not be confused with private prosecutor or prosecuting witness.

The original American prosecuting system was highly centralized. Each of the original colonies had an attorney general and as the population grew, local assistants were established to represent the state in court. These local officials, originally responsible to the central government, as in England, became independent in most of the states and popular election finally marked their extreme "democratization." In most states these local officials are county officers, although in a number they exercise power throughout a larger judicial district. There are various ways of designating this office, including "prosecuting attorney," "county attorney," "state's attorney," "district attorney" and "solicitor." In some of the states the office of public prosecutor is provided for in the constitution. In Missouri is a statutory office.[1]

The Powers and Duties of the Prosecutor

The duties of the prosecuting attorney in this state today are numerous. In general it is his duty to commence and prosecute all civil and criminal actions in his county in which the state or county may be concerned, and to defend all suits against the state or county; to prosecute forfeited recognizances and actions for recovery of debts, fines, penalties and forfeitures accruing to the state or county; to follow and prosecute or defend causes in which a change of venue may be granted; and to prosecute appeals and writs of error in criminal cases in the courts of appeal.[2] He does not, however, prosecute appeals before the Supreme Court. That duty devolves upon the attorney general. Appeals and writs of error in felony cases are taken to or sued out of the Supreme Court. The appellate jurisdiction of the St. Louis, Kansas City and Springfield courts of appeal in criminal cases is limited to state misdemeanors. In such cases it is the duty of the prosecuting attorney to follow the case through to the court of appeals and to make out and cause to be printed the necessary abstracts and briefs. In felony cases this is done by the attorney general, who, however, may be assisted by the prosecuting attorney of the county where the case originated.

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[1] State ex rel Attorney v. Davis, 44 Mo. 129.

[2] R. S. 1919, Secs. 736, 738.

Numerous statutes have been enacted from time to time, making it the duty of the prosecuting attorney to institute suits for the enforcement of specific statutory provisions. These laws would seem, in the main, to be merely directory and probably unnecessary because they do not enlarge upon the powers and duties of the prosecuting attorney under the general law. As an indication of what is expected of this officer, some of these special laws are noted on page 561.

At the session of the Missouri Legislature of 1824, three years after the state was admitted to the Union, the Supreme Court was given the power to appoint in each judicial circuit in the state, except that in which the seat of government would be, a "suitable person, learned in the law, as circuit attorney, who shall be commissioned by the governor, and shall hold his office for the period of four years, unless sooner removed."[1] This statute was later amended by striking out the words "learned in the law," and "unless sooner removed."[2] In 1836 the office of circuit attorney was made elective, and at the same session the General Assembly provided that there should be one such officer in each judicial circuit, except that containing the seat of government.[3] In 1841 the General Assembly authorized the county courts of six counties in the state to appoint a county attorney with certain powers and duties with respect to advising the county court in civil matters pertaining to the county.[4] In 1843 this power was given to the county court of each county in the state whenever in the judgment of that court it should be necessary or expedient to make such an appointment, and the duty of such county attorney was to give legal advice and opinions to the county court and to prosecute and defend, on behalf of the county, all cases and matters which might come before that court in which the county was interested. The term of office of the county attorney was fixed at twelve months, with his compensation determined by the court.[5]

In 1845, all of the circuit attorneys then holding office in the state having been elected, it was provided that the qualified voters of each judicial circuit except the one including the seat of government, should elect one competent circuit attorney in the year 1848, and every four years thereafter.[6]

In 1854 the office of assistant circuit attorney for the Eighth Judicial Circuit, consisting of St. Louis County which then included the City of St. Louis, was created, such assistant to be appointed by the circuit attorney.[1] These changes, therefore, provided dual legal representation in each judicial circuit in the state through a circuit attorney having jurisdiction of criminal matters in all the counties in the circuit, and a county attorney with jurisdiction of civil matters. This was later corrected by an amendment providing that no county attorney should be appointed in any county in which the circuit attorney resided.[2]

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[1] R. S. Mo. 1825, p. 156, Sec. 2.

[2] R. S. Mo. 1835, p. 89.

[3] Laws Mo. 1836-37, pp. 9, 10.

[4] Laws of Mo. 1840-41, pp. 166-168.

[5] Laws Mo. 1842-43, pp. 17, 18, Secs. 1-3.

[6] R. S. Mo. 1845, Secs. 5 and 6, p. 156.

In 1870[3] the law was amended so that the circuit attorney in each circuit was required to perform the duties of the county attorney in the county in which he resided and should receive compensation fixed by the county court. The duties of the county attorney were enlarged and at the same time the duties of the circuit attorney were more definitely prescribed. Complications arising from these statutes resulted in the General Assembly abolishing the office of circuit and county attorney, except in St. Louis County, and providing that in 1872 and every two years thereafter, there should be elected in every county in the state except St. Louis County, a "prosecuting attorney" who should perform the duties then devolving by law on the circuit attorneys and the county attorneys. This law was amended, however, in 1873, by providing that the county court of any county in the state might employ one or more attorneys at law to aid and assist the prosecuting attorney in any civil business when in the judgment of the court the interest of the county required such assistance.[4]

In 1879 a law was enacted providing that in 1880 and every two years thereafter there should be elected in each county of the state a prosecuting attorney who should be "a person learned in the law," at least twenty-one years of age and to hold his office for two years.[5] Later this was amended so as to require the prosecuting attorney to be "duly licensed to practice as an attorney at law in this state and enrolled as such." This law remained unchanged until 1923 when an amendment was adopted adding the provision that the prosecuting attorney shall be "a bona fide resident of the county in which he seeks election for twelve months next preceding the date of the general election at which he is a candidate for such office." [6]

It will be observed that at the time the office of circuit attorney was abolished throughout the state an exception of the City of St. Louis was made, but at the time the law was enacted requiring the election of a prosecuting attorney in every county of the state, there was no exception made of the City of St. Louis. That accounts for the fact that there is at present both a circuit attorney and a prosecuting attorney in the City of St. Louis. It was originally provided that the assistant circuit attorney in St. Louis should be elected, but at present all of the assistant circuit attorneys in the City of St. Louis are appointed by the circuit attorney, with the approval of the circuit judges. There are various statutes pertaining to the qualifications and method of appointment of assistant prosecuting attorneys throughout the state, but generally speaking they are appointed by the prosecuting attorney and approved by the county or circuit judges.[1]

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[1] Laws Mo. 1854-56, pp. 9-10.
[2] R. S. Mo. 1855, Sec. 25, p. 277.
[3] Laws Mo. 1870, p. 22.
[4] Laws Mo. 1873, p. 18.
[5] R. S. Mo. 1879, Sec. 507.
[6] Laws Mo. 1923, p. 132.

The imposing list of duties devolving upon the prosecuting attorney under the statutes is misleading. While in some counties he performs an occasional duty under one or another of these numerous special laws, the performance of these duties is not as onerous as would appear. In practically every county in the state his chief duties are the prosecution of misdemeanor cases before justices of the peace, hearing complaints in his office, and the preparation and trial of felony cases when the circuit court is in session. The circuit courts are not in continuous session except in the more populous communities, but under the term system meet only occasionally and are in session for only a short time.

Compensation

The General Assembly of 1919 enacted a law fixing the salaries of prosecuting attorneys of the state as follows:[2]

Population of County	Salary per Year
Less than 10,000	$1,000
10,000, less than 15,000	1,100
15,000, less than 20,000	1,200
20,000, less than 25,000	1,800
25,000, less than 30,000	2,000
30,000, less than 50,000	2,500
50,000, less than 70,000	5,000
70,000, less than 100,000—not containing a city of more than 75,000 in which the Circuit Court is not held in more than one place	4,500

to be paid monthly.

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[1] Secs. 746, 751, 754, 759, 765.

[2] These salaries are fixed by the statute which provides that "the number of inhabitants of any county shall * * * * be ascertained by multiplying the whole number of votes cast at the last preceding presidential election by five until after the population of such county shall have been ascertained by the next decennial census of the United States." At the same session of the General Assembly at which the salary act was passed women were authorized to vote for president. Consequently the vote for president in 1920 was increased so that the use of the multiple of five for the purpose of determining population procured a wholly fictitious result. Therefore a number of counties in Missouri are given a much higher population in determining the salary of the prosecuting attorney than they actually contain. It seems likely that this may be corrected at the next session of the General Assembly which would leave the salaries at the very low scale referred to.

The salary in counties of more than 100,000 and containing large cities, is regulated by various laws and range somewhat higher than those in the smaller communities.

The General Assembly of 1921 passed an act[1] materially changing the salaries, but the same was declared unconstitutional by the Supreme Court.[2]

THE ATTORNEY GENERAL AS PROSECUTOR

Upon the governor of the state devolves the duty to take care that the laws are distributed and faithfully executed, and he is made a conservator of the peace throughout the state under the provisions of the constitution.[3] As an incident to this duty the statute[4] authorizes the governor to direct the attorney general or one of his assistants to aid any prosecuting or circuit attorney in the discharge of their respective duties in the trial courts and in examinations before grand juries, so it often occurs that the attorney general, when so directed, aids the prosecuting attorneys in the performance of their duties.[5] The attorney general is authorized by law to call upon the prosecuting or circuit attorney of the county in which proceedings for violation of the anti-trust laws are brought, in which event it is made the duty of the prosecuting or circuit attorney to render such assistance as the attorney general may require.[6]

THE PROSECUTOR'S CONTROL OF CRIMINAL CASES

The power of this official is practically unlimited in prosecuting and refusing to prosecute criminal cases. Since the amendment to Section 12, article 2 of the constitution was adopted in 1900, which authorized persons to be charged with felonies by information of the prosecuting attorney as well as by indictment, that official has had in his keeping probably the most important powers conferred upon any official having to do with the administration of criminal justice in Missouri. He has wide discretion in the matter of starting or abating criminal prosecutions. No prosecution can be had either for misdemeanor or felony until the prosecuting attorney files his information or the grand jury finds a true bill. In practically all of the rural and semi-urban communities outside of the large cities, the grand jury is in session only when called by the circuit court and then usually to meet an emergency and adjourn during the term. This leaves the discretion to initiate prosecutions between sessions of the grand jury exclusively in the hands of the prosecuting attorney.

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[1] Laws Mo. 1921, p. 575.

[2] State ex rel v. McCaffrey, 272 S. W. 921.

[3] Const. Mo. Art. 5, Sec. 6.

[4] R. S. Mo. 1919, Sec. 693.

[5] State v. Sullivan, 110 Mo. App. 75. 33 L. N. S. 569 N.

[6] R. S. Mo. 1919, Secs. 9660, 9684.

The extent to which the grand jury has been displaced by the prosecuting attorney as the primary agency of prosecution, is indicated by the following table showing the relation of charges by information to charges by indictment:

TABLE I

Charges by Indictment Related to Charges by Information

	Total Cases Circuit Ct.	Informations		Indictments		No Record in Counties	
		No.	%	No.	%	No.	%
St. Louis City.........	1,000	905	90.50	74	7.40	21	2.10
Jackson County........	804	570	70.89	171	21.27	63	7.84
Buchanan County......	119	115	96.64	2	1.68	2	1.68
Total Urban.........	1,923	1,590	82.68	247	12.85	86	4.47
60-69% Urban.........	412	375	91.02	30	7.28	7	1.70
50-59% Urban.........	368	303	82.33	48	13.05	17	4.62
40-49% Urban.........	143	111	77.62	30	20.98	2	1.40
30-39% Urban.........	1,012	844	83.39	160	15.82	8	.79
20-29% Urban.........	313	299	95.53	9	2.87	5	1.60
10-19% Urban.........	635	589	92.75	35	5.51	11	1.74
0- 9% Urban.........	163	133	81.60	16	9.82	14	8.58
Total Non-Urban....	3,046	2,654	87.14	328	10.76	64	2.10
Total State.......	4,969	4,244	85.41	575	11.57	150	3.02

Liquor Cases

	Total Cases Circuit Ct.	Informations		Indictments		No Record in Counties	
		No.	%	No.	%	No.	%
St. Louis City.........	5	5	100.00	0	.00	0	.00
Jackson County........	17	2	11.76	15	88.24	0	.00
Buchanan County......	21	9	42.86	12	57.14	0	.00
Total Urban.........	43	16	37.21	27	62.79	0	.00
60-69% Urban.........	53	33	62.27	19	35.85	1	1.88
50-59% Urban.........	58	16	27.59	42	72.41	0	.00
40-49% Urban.........	32	13	40.63	18	56.25	1	3.12
30-39% Urban.........	207	80	38.64	126	60.87	1	.49
20-29% Urban.........	55	49	89.09	6	10.91	0	.00
10-19% Urban.........	165	142	86.06	20	12.13	3	1.81
0- 9% Urban.........	32	28	87.50	4	12.50	0	.00
Total Non-Urban....	602	361	59.96	235	39.04	6	1.00
Total State.......	645	377	58.45	262	40.62	6	.93

Thus the power to initiate felony prosecutions, which for centuries in this country and in England was lodged in the grand jury of twelve men, has in Missouri largely passed to one man, the public prosecutor.

This is subject to the exception that a felony prosecution may be begun by an affidavit of the complaining witness filed before a justice of the peace[1] upon which the warrant issues and a preliminary hearing had, and the theory of the preliminary hearing is that the justice of the peace may hold or release the defendant according to the evidence produced: but practically speaking, the prosecuting attorney controls that too, because he must produce and present the evidence, and the justice of the peace as a rule is guided by the recommendation of the prosecuting attorney with respect to the sufficiency of the evidence. Regardless of the action of the examining magistrate, discretion still rests with the prosecuting attorney, because if the justice finds the evidence insufficient and discharges the defendant, the prosecutor may, nevertheless, file his information in the circuit court charging the defendant with the same crime with which he was charged in the affidavit and upon which he had a preliminary hearing. On the other hand if the defendant is bound over by the justice of the peace, the prosecuting attorney may refuse to file an information or to present the case to the grand jury. If the case be presented to the grand jury without the advice or consent of the prosecuting attorney, he may influence the action of the grand jury as its legal adviser, which might result in a refusal of that body to return a true bill, or if they insisted upon returning a true bill over his objection, he might in the first instance refuse to sign the true bill, but if required by the court to do so, could dismiss or nolle prosequi the case as soon as it was filed in the circuit court. The power to nolle prosequi a case exists in the prosecuting attorney until the jury is sworn,[2] after which time the judge controls the disposition of the case. However, since the prosecuting attorney is in charge of the case and can refuse to proceed with it at any stage of its prosecution, the court usually but not always accepts the recommendation of the prosecuting attorney as to the disposition of the case even after the absolute power to dispose of it has technically passed from his hands. For the same reason the court, as a general rule, depends upon the prosecuting attorney to recommend the punishment in the event of a plea of guilty by the defendant or the action to be taken upon applications for judicial paroles or commutations. Even the authorities in state penal institutions sometimes ask the prosecuting attorney who prosecuted the case for his recommendations upon applications for parole, pardon or commutation of sentence. Thus it will be seen that from the time the complaint is first made until sentence is executed, and even thereafter, the prosecuting attorney exercises, as Dr. Gehlke says in his analysis of the statistical data, "the power of life or death" over the case.

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[1] In the City of St. Louis the court of criminal correction holds the preliminary hearing and the justices of the peace in that city have no criminal jurisdiction.

[2] See page 146.

THE USE OF THIS POWER

The manner in which that power is exercised depends upon the individual prosecutor. Responsibility for the large percentage of failures of punishment in the tremendous number of crimes committed each year, is one which the prosecutor cannot easily avoid. The survey covers a period of two years in the country districts, in which the records in thirty-five counties, one in each judicial circuit, were examined, and one year in St. Louis City, Jackson and Buchanan Counties. During that period 7032 warrants were issued in these portions of the state, and in the places where it was possible to get a record of warrants refused, *i. e,* in St. Louis and Kansas City, 1335 such instances were found.

This was a record of felonies only, such cases as murder, highway robbery, burglary and larceny, rape and all manner of serious crimes punishable by imprisonment in the penitentiary. For every warrant applied for it may safely be assumed that a crime of felony class was involved.[1] If we deduct a small number of instances (2.91% of the whole) where cases were disposed of by dismissal because of a new information or indictment being filed on the same charge, we may safely assume as to the rest that no punishment followed the charges. So it is of the utmost importance to determine what proportion of cases result in no punishment through the action of the prosecutor, because of all the officers of the law charged with the enforcement of the laws, he has the greatest power over the case.

These records disclose 8637[2] cases in which arrests were made and warrants applied for; 1335 were refused and 7032 were issued. Out of this number 2680 were sentenced. Of the number sentenced 344 escaped punishment[1] by being paroled by the court or local parole board, 93 appeals were pending and 11 miscellaneous dispositions left 2232 cases out of the total in which some punishment was administered. But out of this number 1832 were punished on pleas of guilty, leaving but a very small number punished as the result of a trial. So it will be seen that of the total number of crimes committed of which there is record and for which there appeared sufficient evidence to charge some individual with the offense, less than one-fourth were actually punished, and of this one-fourth, 82.08% were confessed felons. The other 6135 crimes upon which prosecutions were started or warrants applied for were not prosecuted by the state. By reason of the great power lodged in the prosecutor the main responsibility for this result must be upon that officer. But it is by no means to be assumed that by fixing this responsibility it is intended to charge that the prosecutors acted improperly in all the 6135 cases referred to. Warrants are properly refused and cases dismissed when the prosecutor believes the defendants to be innocent or conviction impossible.

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[1] In St. Louis the police department keeps a record of certain cases of more serious felonies reported. Inasmuch as all such cases are reported to the police department, the record is complete in that city for the class of felonies of which a record was kept. In Kansas City and St. Joseph a partial record of felony complaints was kept by the police department on a limited number of felony cases which, however, did not include complaints on all felonies committed in Jackson and Buchanan Counties, respectively, because many such complaints were lodged with other officials than the police. It has been possible, therefore, in St. Louis to have a complete check on solved and unsolved crimes in that city. In Kansas City and St. Joseph the check is complete only so far as the complaints to the police department in the classes of cases noted are concerned. A table of these results will be found on pages 543-545. Outside of the three cities mentioned there is no record kept of crimes reported.

[2] The total number of cases referred to does not include arrests on suspicion, but only cases where the police applied for warrants. Thousands of arrests were made in the cities during this period where the person arrested was held 20 hours or less and released by the police who did not apply for a warrant.

It sometimes happens that the press clamors for arrests where some heinous crime has been committed, resulting in increased activity by the police and sheriffs. In such cases innocent persons may be arrested and warrants applied for. It is the duty of the prosecutor to scan the evidence closely and authorize the prosecution of the persons arrested, only when he is satisfied that there is reasonable cause to believe the person arrested actually committed the crime.

Free Exercise of Releasing Power in Cities

Any number of proper considerations may move the prosecutor to refuse to prosecute, but if, out of thousands of cases where arrests are made the warrants applied for or prosecutions started to the end that some individual be punished for a specific crime which is known to have been committed by someone, the discretion and power of this officer is exercised so as to stop the prosecution and leave the crime unsolved and the person who committed it unpunished, then it is important to search for the reasons why the power and discretion lodged by the people in this officer have thus been exercised. The survey has conclusively demonstrated the fact that this discretion is being liberally exercised in Missouri to release persons charged with crime. Furthermore, it seems well established that the discretion is being exercised much more freely and liberally, especially in the early stages, in the cities than in the country districts. A striking illustration of this is contained in the Table[1] showing that in the City of St. Louis out of 2464 cases wherein the police department applied to the circuit attorney for warrants, 972 warrants were refused, and 1492 issued; and in Jackson County out of 2060 warrants applied for, 363 were refused and 1697 issued. In Buchanan County 300 warrants were applied for and 300 issued. It should be stated that in the City of St. Louis the case investigation began in the police department because practically 95% of the cases found there went into the arrest records of the police department. In Jackson County only about 40% of arrests originated in the police department. The 972 cases of warrants refused in St. Louis represent the number of cases where the police department believed they had sufficient evidence to justify the issuance of warrants, but when the evidence was submitted to the warrant officer in the office of the circuit attorney the warrants were refused.[2] This is true also of the 363 warrants refused in Kansas City, except that, as has already been stated, it represents but 40% of the total number of cases actually begun in that city. There was no way of determining how many warrants had been refused by the prosecuting attorney, or the justices of the peace, in Kansas City on the remaining 60% of cases, because there was no record available of such refusals. In St. Joseph it was found that a warrant was, in every instance, issued when applied for by the police. That is due to a workable understanding and co-operation between the police department and the prosecuting attorney. However, the effect of this policy is reflected in the fact that St. Joseph has the highest percentage of disposals in preliminary hearings, 60.33%, while St. Louis has the lowest, 27.95%, and Kansas City next with 50.56%. This means that out of 1492 cases where warrants were issued in the City of St. Louis, 417 of them dropped out in the preliminary hearing; out of 1697 cases wherein warrants were issued in Kansas City, 858 of them dropped out at that stage; while in St. Joseph, of 300 cases of warrants issued, 181 of them died in the preliminary hearing.

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[1] By punishment is meant payment of a fine or actually serving time.

In the country districts the record is quite different. For out of 3543 cases in which warrants were issued, only 378 of them went out at the preliminary hearing. Because of the absence of any records it is not possible to determine, in what number of cases in the country districts warrants were refused. However, it is the practice in the country districts for justices of the peace to confer with the prosecuting attorney before issuing a warrant in a felony case, and to abide by the advice of the prosecutor as to whether a warrant shall be issued. The cases in those districts in which warrants were issued, therefore, represented the judgment of the prosecuting attorney that there was probable cause that the person to be charged was guilty of the crime and that the 378 cases which went out at the preliminary hearing were cases in which the evidence convinced the prosecutor, as well as the justice, that there was no probable cause.

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[1] See page 290.

[2] Technically, the circuit or prosecuting attorney does not issue warrants but the question whether a warrant shall be issued is submitted to him. If he advises that a warrant be not issued, it is not issued. In the larger cities the warrant officer to whom applications for warrants are made is an assistant circuit or prosecuting attorney.

In the whole state it will be noted[1] that 85.97% of cases in which warrants were issued in the country districts went into the circuit court, and that only 55.12% of similar cases in the cities went on to the next step. Considering the practice of the examining magistrate of consulting the wishes of the prosecuting attorney, this means that upon the prosecuting attorneys in the cities rests the main responsibility for the death in the preliminary stages of nearly one-half of the cases in which warrants were issued, and in the cases of Kansas City and St. Louis, a very much larger number of cases in which the police departments applied for warrants, believing there was sufficient evidence to justify a prosecution; and that in the country the prosecutors have shown a disposition to submit or recommend the submission of the case to the judge and the jury in the circuit court for decision, rather than to take the responsibility of disposing of it without a trial. In this connection attention should be called to the fact that of the total number of cases which died at the preliminary examination stage, Kansas City has a record of 40.39% which were dismissed for want of prosecution. It is the duty of the prosecuting attorney to prosecute cases in the preliminary examination. The examining magistrate discharged on account of insufficient evidence 14.6% in the cities, and 4.84% in the country. Another important class of cases which died between the issuance of the warrant and charge in the circuit court are those in which the circuit or prosecuting attorney refused to file informations or present the cases to the grand jury after the defendant was bound over at the preliminary hearing. The prosecutors in the cities are much more given to this practice than in the country districts, as is shown by the statistical tables.[2]

The circuit attorney in St. Louis failed to prosecute in 69 felony cases other than liquor prosecutions in the year from October 1, 1923, to October 1, 1924, after the Court of Criminal Correction had found that there was probable cause to believe that the defendants had committed the crimes with which they were charged and had bound them over for action by the circuit attorney, or the grand jury upon presentation by the circuit attorney. The crimes with which these defendants were charged are classified as follows:

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[1] Table No. IB, p. 276.

[2] Table No. III, p. 283.

Assault to kill	1
Assault to do great bodily harm	1
Carrying concealed weapons	18
Burglary	5
Burglary and larceny	9
Robbery	6
Grand larceny	4
Larceny from dwelling	1
Larceny from person	7
Larceny of auto	3
Forgery	3
Sodomy	1
Cheats, frauds, bogus checks	1
Driving auto without consent of owner	1
Driving auto while intoxicated	7
Felonious wounding	1
Total	69

In six other felony cases during the same period, the grand jury returned a "no true bill." The 69 cases above referred to were not presented to the grand jury according to the records.

CASE MORTALITY AND THE PROSECUTOR

Not only in starting prosecutions, but in terminating them after they start, does the enormous importance of the prosecutor appear. The public is accustomed to thinking that arrests are followed by trials and that juries and judges decide the fate of persons accused of crime. The prosecutor is to the public a person who must prosecute all who fall into the toils of the criminal process. This conception is far from correct. In fact the prosecutor makes most of the decisions; he terminates most of the cases, and upon him falls the responsibility of freeing most of those who are charged with crime. Acquittals by juries and by direction of the court after trial are wholly insignificant compared with acquittals by the prosecutor before trial. To illustrate, certain statistics have been compiled to indicate the "mortality" of cases, that is, the points along the course of the criminal process where cases "die," when the state ceases to pursue and the accused is set free. In the following figures is clearly shown the operation of the prosecutors' discretion freely exercised all along the line, prior to trial in the circuit court. These tables show the total number of cases in which pleas of guilty were taken, total number of trials had, those tried and found guilty, those tried and acquitted, and the relation borne by each to the total number of warrants issued, the total of cases coming into the circuit court, and, in the two latter instances, to the total trials had in the three urban centers of St. Louis City, Jackson and Buchanan Counties, and the rest of the state represented by the counties in which the survey was made:

TABLE IIA
CASE MORTALITY—ENTIRE STATE

Plead Guilty	2,154	30.64% of total warrants issued. 43.35% of total cases going into Circuit Court.
Total Trials Had	848	12.06% of total warrants issued. 17.06% of total cases going into Circuit Court.
Tried and Found Guilty	525	7.47% of total warrants issued. 10.56% of total cases going into Circuit Court.
Tried and Acquitted	323	4.59% of total warrants issued. 6.50% of total cases going into Circuit Court. 38.09% of total trials had.

Total Warrants Issued		7,032
Disposed of in Prelim. Exam.		1,834
No true bill	9	5,198
No information	220	
	229	229
To Circuit Court		4,969
Nolle Prossed	1,106	
Disposed of an action of Court	251	
Other Dispositions	609	
	1,966	1,966
		3,003
Sentenced on Plea of Guilty		2,154
Tried and Acquitted		323
Tried and Found Guilty as Charged		442
Tried and Found Guilty of Lesser Offense		83
Punished, no record of trial or plea		1
		3,003

TABLE IIB
CASE MORTALITY—NON-URBAN COUNTIES

Plead Guilty	1,221	34.47% of total warrants issued. 40.09% of total cases going into Circuit Court.
Total Trials Had	487	13.75% of total warrants issued. 15.99% of total cases going into Circuit Court.
Tried and Found Guilty	300	8.46% of total warrants issued. 9.85% of total cases going into Circuit Court. 61.60% of total trials had.
Tried and Acquitted	187	5.27% of total warrants issued. 6.14% of total cases going into Circuit Court. 38.40% of total trials had.

Total Warrants Issued		3,543
Disposed of in Prelim. Exam.		378
No True Bill	3	3,165
No Information	116	
	119	119
To Circuit Court		3,046
Nolle Prossed	701	
Disposed of on action of Court	188	
Other Dispositions	448	
	337	1,337
		1,709
Sentenced on Plea of Guilty		1,221
Tried and Acquitted		187
Tried and Found Guilty as Charged		243
Tried and Found Guilty of Lesser Offense		57
Punished,no record of trial or plea		1
		1,709

TABLE IIC

CASE MORTALITY—URBAN COUNTIES GROUPED

(St. Louis City, Jackson and Buchanan Counties)

Plead Guilty	933	26.75% of total warrants issued. 48.52% of total cases going into Circuit Court.
Total Trials Had	361	10.35% of total warrants issued. 18.78% of total cases going into Circuit Court.
Tried and Found Guilty	225	6.45% of total warrants issued. 11.70% of total cases going into Circuit Court. 62.32% of total trials had.
Tried and Acquitted	136	3.90% of total warrants issued. 7.08% of total cases going into Circuit Court. 37.68% of total trials had.

Total Warrants Issued		3,489
Disposed of in Prelim. Exam		1,456
		2,033
No True Bill	6	
No Information	104	
	110	110
To Circuit Court		1,923
Nolle Prossed	405	
Disposed of on action of Court	63	
Other Dispositions	161	
	629	629
		1,294
Sentenced on Plea of Guilty		933
Tried and Acquitted		136
Tried and Found Guilty as Charged		199
Tried and Found Guilty of Lesser Offense		26
Punished, no record of trial or plea		—
		1,294

TABLE IID

CASE MORTALITY—INDIVIDUAL URBAN COUNTIES

Plead Guilty		
St. Louis City	585	39.20% of total warrants issued. 58.50% of total cases going into Circuit Court.
Jackson County	289	17.03% of total warrants issued. 35.94% of total cases going into Circuit Court.
Buchanan County	59	19.66% of total warrants issued. 49.58% of total cases going into Circuit Court.
Total Trials Had		
St. Louis City	194	13.00% of total warrants issued. 19.40% of total cases going into Circuit Court.
Jackson County	158	9.31% of total warrants issued. 19.65% of total cases going into Circuit Court.
Buchanan County	9	3.00% of total warrants issued. 7.56% of total cases going into Circuit Court.
Tried and Found Guilty		
St. Louis City	111	7.43% of total warrants issued. 11.10% of total cases going into Circuit Court. 57.22% of total trials had.
Jackson County	109	6.42% of total warrants issued. 13.55% of total cases going into Circuit Court. 68.98% of total trials had.
Buchanan County	5	1.66% of total warrants issued. 4.21% of total cases going into Circuit Court. 55.55% of total trials had.

Tried and Acquitted

St. Louis City..........	83	5.57% of total warrants issued.
		8.30% of total cases going into Circuit Court.
		42.78% of total trials had.
Jackson County.........	49	2.89% of total warrants issued.
		6.10% of total cases going into Circuit Court.
		31.02% of total trials had.
Buchanan County.......	4	1.34% of total warrants issued.
		3.35% of total cases going into Circuit Court.
		44.45% of total trials had.

The Preliminary Hearing

When the people, by constitutional amendment in 1900, authorized the prosecuting attorneys to prosecute felonies upon their own information as well as by indictment, they initiated a new element into criminal procedure in Missouri. For nearly eighty years the only method by which a person could be charged with a felony in this state was by true bill upon the oaths of twelve grand jurors. Placing this power in the hands of one man was a radical departure from the old method. The fear that this power would be abused found expression in an act of the Legislature of 1905 wherein it was provided that in capital cases where the defendant was charged by information he should be entitled to a preliminary hearing before a justice of the peace of the county or the Court of Criminal Correction in St. Louis, thus introducing an intervening officer into the prosecution.[1] In 1907 the General Assembly amended that law by providing that it should apply to all felony cases.[2] In 1909 the law was repealed and re-enacted, restoring the original limitation of the preliminary hearing to capital cause.[3] In 1913 the Legislature went back to the 1907 provision, making it apply to all felony cases.[4] In 1925 the law was further amended so that an information may now be filed by the prosecuting attorney in lieu of an indictment which, after filing, may have been found defective, in which case the defendant is not entitled to a preliminary hearing.

Uncertainty has characterized the course of the Legislature in this matter. This is doubtless due to the fact that the law has been of uncertain value. The Supreme Court has indicated that the preliminary hearing was intended as a safeguard against groundless or vindictive prosecutions which might otherwise occur, where the interposition of the grand jury is dispensed with.[5] But it would not prevent such a prosecution if a vindictive prosecutor should be inclined to prosecute an innocent person, because, as has already been shown, he could continue the prosecution even if the defendant were discharged by the justice. Instances of vindictive prosecutions are rare. A prosecuting attorney who would be capable of such a course would be more likely to use his power to reward friends by refusing to prosecute than to punish enemies by instituting groundless prosecutions. There is much support of the view that the preliminary hearing now provided for contributes nothing to the cause of justice, but on the contrary increases the costs, is one of the main causes of delays in prosecution, and gives the defendant an undue advantage over the state.

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[1] Laws Mo. 1905, p. 132.
[2] Laws Mo. 1907, p. 243.
[3] Laws Mo. 1909, p. 460.
[4] Laws Mo. 1913, p. 225.
[5] State v. Jeffries, 210 Mo. 320.

PROSECUTORS' OPINIONS OF A PRELIMINARY EXAMINATION

In answer to the question, "What, in your opinion, is the necessity for a preliminary hearing," eighty-four prosecuting attorneys in as many counties of the state expressed opinions of this law: sixty-three of them were opposed to it; thirteen others qualified their negative answers in a variety of ways, indicating that while they believed the state was placed at disadvantage by the operation of the law, they believed that the defendant should not be deprived of the right to a preliminary hearing; seven were in favor of the law and one declined to express an opinion.[1]

The former prosecutors, a large majority of whom have engaged in criminal practice since leaving the office, were consulted. Out of twenty-eight answers to the same questions, eleven were favorable to the law and seventeen against it. Those favorable offered a variety of reasons for their position. The most frequent reason assigned was that it enables the prosecutor to keep the docket clear of weak cases and to test the strength of the state's case. The reasons given for opposing the law were much the same as those advanced by the prosecutors now in office.

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[1] The views on this subject of the men, who, so to speak, are on the firing line in Missouri, are interesting. Some of the comment here published gives interesting side-lights on the value of this law:

"Only to give your case to the defendant in advance."

"None unless the state wanted to examine witnesses supposed to be favorable to defendant and put them on record."

"It does very little good except to give the defendant the opportunity to find out what the state has in the way of evidence, and gives the defendant the opportunity to better combat the same."

"I do not believe the state should be compelled to accord a defendant a preliminary examination, but should have the right to conduct such examination or not as the prosecuting attorney might determine, as a rule it only discloses to the defendant the state's case, without the state finding out anything not already known."

"Really no *necessity*. Sometimes state benefits by a preliminary hearing and in some instances costs are saved by disposition in justice court."

"None whatever. The preliminary should be abolished."

"They operate mostly for the benefit of the defendant and seem unnecessary."

"To have witnesses give their testimony under oath."

"Has the disadvantage of revealing the testimony of state while defendant can keep his evidence cloaked."

"None, except the power of the examining magistrate to place witnesses on their oath. And the power of a justice to discharge defendant often hampers justice instead of aiding."

"Well, if innocent, the party is discharged to go on his way and about his business."

"None on the part of the state, but I believe the defendant is entitled to it."

"None. Would like to see it abolished, as it requires too much time of prosecutor and takes time he should have for other duties."

"None. Preliminary hearing should be abolished, as it serves no purpose and only causes costs."

"No necessity. Useless expense and all advantage is to the defendant."

"Places state at great disadvantage at times. Believe this right should not be taken from defendant."

The views of the circuit judges of the state as to the value and importance of this law are divided: 22% of them favor it; 62½% are against it; the others were non-committal.

This should be qualified by stating that some of those who are opposed to the present law, feel that some intervening agency should be retained. This seems to be the sounder view. One of the gravest objections to the present law is that it permits justices of the peace to fix the amount of the bail bond. The vice of this is well illustrated by the comment of a prominent circuit judge who says:

> "I have known of bonds for a man charged with highway robbery being fixed at $500.00 and he never appeared after that."

The consensus of widely distributed opinion is that if the present law governing preliminary hearings is not to be repealed altogether, it should be so amended that some officer of the court, either the circuit clerk or a commissioner, appointed by the court, will conduct this

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"None. The preliminary only exposes the state's testimony. It is held before a justice of the peace, not qualified to hold an examination, and in 99% of the cases the prosecutor knows in advance, if he has prepared his case, whether or not the defendant will be bound over."

"Discourage preliminary hearings when I get the facts without it."

"That the defendant be informed of what he is going to have to meet. It has defects in that it forces the state to show all of its hand while permitting the defendant to keep his covered. A written plea with names of defendants witnesses would remedy that."

"I favor a preliminary hearing because a full review of the facts often discloses a situation at variance with the statements of prosecuting witness."

"It tends at the beginning of a case to advise all interested parties of the facts."

"It appears to me an arraignment before circuit judge or formal preliminary before circuit clerk would far surpass present system."

"None. However I do not dread preliminary hearings. I have always tried to give very little of the real evidence of the state, just enough to bind the defendant over. It helps the prosecutor get a preliminary interest in his case. I see no real reason for same. I try to get some benefits myself as it is the law."

"Gives the state a chance to know as well as the defendant where they are at."

"I do not consider it a necessity. I think it should be optional with the state for the purpose of inquiring into a state of facts."

"I do not favor a preliminary hearing. No good comes from same provided the justice first consults the prosecuting attorney before filing complaints and the latter investigates his evidence."

"I do not believe in preliminaries in their present form. I think if the defendant asks for a preliminary that he should have to present his side of the case also."

"A preliminary hearing is necessary to permit the defendant to really know what the state's charge is, so that they will know what witnesses are necessary for a defense."

"To enable a judicial officer to determine if accused should be bound over and believe it is a good law."

"None—waste of time and money both to state and defendant."

hearing, under the direction of the circuit judge, who shall fix the amount of bail and otherwise exercise supervisory control over the proceedings. The provisions of the present law contained in the amendment of 1925 that the defendant shall not be entitled to a preliminary hearing where an information is substituted for a defective indictment, should be retained.

PERSONNEL

That the people of Missouri have lodged in the public prosecutor the broadest powers and discretion exercised by any other agent of the state in the administration of the criminal laws has already been shown. The record indicates that, as a whole, this power has been quite liberally used to release persons charged with crime before punishment. While this survey has been wholly impersonal and designed to show the administration of the office rather than the efficiency or inefficiency of any particular official, yet the equipment and training of those individuals who hold the office has general significance. We have therefore brought these facts concerning individual prosecutors within the scope of our study of the prosecutor's office.

The office of prosecuting attorney in this state is sought by the younger members of the bar. Some of Missouri's most famous men have started their careers in this office. Senator James A. Reed, former governor Joseph W. Folk, former governor Herbert S. Hadley, the late Champ Clark, and many others, including a large number of the present members of Congress and of the State Legislature are former prosecutors. Former governor Folk was carried into the office of governor by the record he made as circuit attorney of the City of St. Louis. The median age of prosecutors in Missouri today is from twenty-five to twenty-nine years. A heavy majority of the prosecutors of the state would be included in the class from twenty-one to thirty-five years of age. The median of experience in practice of the law before entering the office of prosecutor is from one to four years, and a large majority of the prosecutors are included in the class of men who have had less than ten years experience in actual practice before taking the office. About half of them serve but one term of two years. A very considerable proportion of the remainder serve four years. Six years of continuous service, or three successive terms, is comparatively rare.

A list of questions was submitted to the 115 prosecutors in the state wherein they were requested, among other things, to furnish information concerning their legal and scholastic preparation, and occupations prior to admission to the bar. 107 of them answered the general questionnaire, of which 17 did not answer the specific question of scholastic preparation; 3 did not indicate whether graduated from law school and 14 did not answer the question regarding previous occupation. These returns show that 65 were graduates of law schools and 39 were not. Of the latter class 7 have taken some law school work averaging a little more than 2½ years. The following table shows the law schools from which the 65 graduates were graduated:

Missouri University	32
Kansas City School of Law	5
Washington University	4
St. Louis University	3
Michigan University	3
Hamilton College of Law	2
Drake University	2
Chicago College of Law	2
Cumberland University	2
Iowa University	1
Virginia University	1
Kansas University	1
Northwestern University	1
Georgetown University	1
Illinois Wesleyan	1
Valparaiso University	1
Chattanooga Law School	1
American Extension University	1
Centre College	1
	65

Of those who attended law school but did not graduate,

1 had a Correspondence Course in Law.
1 had 3 yrs. Law—2 at U. of Va., 1 at U. of W. Va.
1 had 3 yrs. Law at Mo. U. but not enough college credits to graduate.
1 had 2½ yrs. Law at Mo. U.
1 had 2 yrs. Law at Mo. U.
1 had 2 yrs. Law at Washington U.
1 had 2 yrs. of La Salle 3-year course.

The preliminary educational training of the 90 prosecuting attorneys who gave the information in their answers to the questionnaire is shown by the following table:

Common School only	5
High School 1 year	2
High School 2 years	1
High School 3 years	2
High School Graduates	14
Normal School 1 year	6
Normal School 2 years	3
Normal School 3 years	1
Normal School Graduates	9
Intermediate Colleges 1 year	0
Intermediate Colleges 2 years	3
Intermediate Colleges 3 years	2
Intermediate College Graduates	4
College 1 year	3
College 2 years	9
College 3 years	4
College Graduates	22
	90

Of 93 prosecutors who responded to the question "What was your occupation last before admission to the bar?" 42 were students, 33 teachers and the scattering few remaining divided among the following occupations:

Farmers	3
Circuit Clerks	2
Deputy Circuit Clerks	2
Soldiers	3
Court Stenographer	1
Salesman	1
Postal Clerks	1
Private Secretary	1
Merchant	1
Postmaster	1
Funeral Director	1
Collector	1
	18

THE PRIVATE PRACTICE OF THE PROSECUTOR

Of the questionnaires addressed to the prosecuting attorneys, eighty-five out of one hundred and thirteen of whom returned answers, three questions were very definitely related to each other:

> "Are you able to prepare your case on the law and facts as well or as thoroughly as the average practitioner at your bar prepares the defense case, and if not, is it due to lack of time, facilities or help?"
>
> "Do you need assistants?"
>
> "What proportion of your time, if any, do you devote to private practice?"

The answers to these questions disclosed a very interesting situation.[1] Outside of the counties where the prosecuting attorney is required by law to devote all his time to the office, of those answering, seventy percent believed that they were able to prepare their cases on the law and facts as well as the defense case is prepared; thirty percent stated they were unable to do so. Of the latter, three stated as their reason that they were hampered by lack of time. Of those who were hampered by "lack of time" one devoted one-tenth of his time to private practice; another devoted one-third of his time to private practice but needed one assistant; and another devoted one-half of his time to private practice and needed one assistant. Four stated that they were hampered by lack of facilities, one of whom gave one-third of his time, another one-half, another one-fifth and the other none of his time to private practice. All of the latter stated they needed no assistants. Five stated they were hampered by lack of help, one of whom gave one-fourth of his time to private practice, one one-seventh, one one-tenth, one one-twentieth and the other scarcely any of his time to private practice. Three of these stated that they needed one assistant each, and each of the others needed a stenographer. Three stated they are hampered by lack of time and help; one of whom gives one-fourth and another one-half of his time to private practice, but each of these stated that he needs one assistant. Of three who stated they were hampered by lack of time, help and facilities, one gives one-eighth of his time, another one-fourth and the other one-third to private practice, and each needs one assistant.

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[1] The prosecuting attorneys in Jackson County, Buchanan County, St. Louis City and St. Louis County, devote their whole time to the duties of their respective offices.

Of those who answered that they prepared their cases as well as the average case was prepared by defense counsel, four state that they are hampered by lack of help and three of them claimed they needed one assistant each. Two stated that they are hampered by lack of time, one of whom gives one-fourth and the other one-fifth of his time to private practice and claimed that he needed one assistant. Another, while stating that he was hampered by lack of facilities, and time, claimed he needed one assistant although he was giving one-fourth of his time to private practice.

These figures illustrate the old adage that a man cannot serve two masters. A glance at the salaries provided for the prosecuting attorney in the average Missouri county on the basis of population according to the last census is enough to convince one that the office would not be attractive to a lawyer who has the ability to earn even a moderate income in private practice. Recognition of this fact and the fear of increasing tax burdens, already so heavy upon the people of the country districts, doubtless furnish the reasons for permitting prosecuting attorneys in all but the metropolitan areas to engage in private practice. However, it is obvious that there is a considerable number of prosecuting attorneys who feel that in view of the limited emoluments of the office they are not justified in wholly neglecting their private practice. This often results in a neglect of the business of the state. But the practice is fraught with danger in that the duties of the officer may at times conflict with the interests of his clients in private practice, and often the temptation to use the office to advance his interests in private practice is presented to the prosecutor. To yield to such temptation would, of course, amount to corruption in office, and there has been no attempt in this survey to get any information that would tend to establish any such fact. On principle, however, it is wrong, and the salaries should be fixed at such a figure as to attract lawyers of ability and standing in the community and justify them in abandoning their practice during the term of their office.

In considering the practical aspects of a recommendation that prosecutors should be required to devote their whole time to the duties of the office, the main question is that of salary. But another important element to be considered is the supply of available candidates for the office. In one county in Missouri there are but 2 lawyers, in another there are but 3, in seven others there are but 4 and in seven there are 5; in nine there are 6, in seven there are 7, in four there are 8, in six counties 9, in eight others 10; in twenty-eight there are 11 to 15, in ten 16 to 19, in eleven there are 20 to 25 and in eight over 25.

The average number of lawyers in 22 counties of 12,000 population and under is 6. In nine other counties of 12,000 to 13,000 population the average is 7 and in twenty counties of 13,000 to 15,000 inhabitants the average is 10, although one of such counties has but 3 and another 4. The civil practice in a great many counties is quite light and is decreasing in volume, forcing the lawyers in these counties to engage in various outside activities. The office of prosecutor, therefore, carrying with it a regular salary is, if the salary is adequate, something to be desired. However, in counties having but a few lawyers and the salary, of necessity small, it would appear improbable that the better qualified men in the county could be induced to take the office. It is difficult to draw the line but it would seem that it would be quite impractical to prohibit this officer in counties containing a population of 12,000 or less from engaging in private practice.

The prosecutor is opposed during the whole course of the prosecution of the average felony case by the best talent of the local bar, and sometimes that of adjoining counties. Defense counsel as a rule receives a fee for defending an important felony case which justifies him in giving close attention to the preparation of the case on the law and the facts, and practically every such case is stubbornly contested by vigorous, resourceful and able counsel for the defendant. Handicapped as he is by the rules of procedure governing the trial of the case, the prosecuting attorney should not be lacking in adequate experience, preliminary educational equipment and those qualities which make for success as a lawyer, nor should he be lacking in office facilities and such clerical assistance as will enable him to interview his witnesses, brief the law, and do the other necessary things involved in the proper preparation and presentation of the state's case.

In civil practice it is rare, indeed, that counsel for plaintiff goes into court without having prepared himself on the law of his case. In important cases a trial brief is prepared beforehand. All of his witnesses have been interviewed in advance and written statements taken whenever possible in every important well-prepared civil case, and counsel for the plaintiff prepares the court's instructions to the jury. The prosecuting attorneys of Missouri are, in the main, unable to prepare the state's case with anything like the thoroughness that the average civil case is prepared. The results are likely to be disastrous, for even if the prosecutor is able to get a conviction, if the case has not been properly prepared on the law or if the prosecutor is unfamiliar with the principles of law involved in the specific case, there may be a reversal on appeal which usually results in dropping the prosecution.

In a vast majority of counties in Missouri the prosecuting attorney has no clerical help of any kind. The county court in some instances will authorize the employment of a clerk or stenographer, but the counties in which this is done are the very rare exceptions. In some of the smaller communities where the criminal docket is light, no clerical or other assistance is needed, but there are numerous counties where the prosecutor is called upon to handle a large number of cases of various kinds, in addition to hearing complaints and handling the routine of his office, and is in need of such aid, where the county court has refused to authorize any clerical assistance whatever.

To the question "Does the county court authorize the expense of clerical help which you may need," seventy out of eighty-six prosecuting attorneys answered in the negative. It is inevitable under such conditions that the prosecuting attorney will be unable properly to prepare his cases. The county court upon certificate of necessity signed by the circuit judge, should be required to authorize the employment of such clerical assistance as the prosecuting attorney requires for the proper and efficient handling of the business of his office, the same to be paid out of the general fund, and in the larger counties the law should provide a contingent fund to be used by the prosecutor in paying the expenses of securing attendance at the trial of necessary witnesses and in the preparation of his cases.

The circuit attorney of the City of St. Louis has a contingent fund of $5,000 which, he claims, is soon exhausted and should be at least $10,000 per year. He admits that he is not able to prepare his cases on the law and facts as well or as thoroughly as the average practitioner in St. Louis prepares the defendant's case,—at least not to the extent that could be done with more help. The circuit attorney in St. Louis is paid $5,000 per year and he has eight assistants, in addition to what appears to be an adequate clerical force.[1]

The office in Kansas City is allowed $2,500 a year contingent fund, which it is claimed does not cover 25% of the obligations, and that that office is forced to call upon interested parties to donate the funds necessary for the return of criminals and for many other items in preparation of cases. Where the victims are not financially able to do this and assist in the preparation of the case, the offenders often escape apprehension and prosecution. Although the prosecutor has eleven assistants, it is claimed that two more regular assistants and additional investigators could be used to advantage and are necessary to the proper preparation of important cases in that city.

The library facilities in the three large cities are apparently adequate, and the same applies to the country districts adjoining larger cities.

In addition to lack of assistants, the average prosecutor in Missouri has inadequate library equipment to prepare his cases, on the law. There are so many laws and decisions of the courts of last resort which control the trial of a criminal case, that the prosecutor must have access to a multitude of statutes, digests and appellate court reports before he is in a position to go into the trial of any important case. Such a library and service as are necessary to keep in touch with the statutory law with its frequent amendments and with the decisions of the courts which are constantly appearing involve no inconsiderable expense, sometimes beyond the ability of the prosecutor in a small community to meet out of the salary of his office. 31.4% of the prosecutors of Missouri report adequate library facilities; 51.16% have but meager library equipment; the others have the Missouri reports and digests but very few other reference works. The county court of every county in the state should be required upon certificate of the circuit judge to provide such reference books as the judge and prosecutor shall deem necessary to the proper conduct of the office.

THE PREPARATION OF INSTRUCTIONS

The court is required by statute to give an instruction to the jury on every phase of a criminal case encompassed in the charge and the evidence, and if the court fails in this duty it commits error for which the case may be reversed and remanded by the Supreme Court.

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[1] The circuit attorney in St. Louis handles only felony cases. The prosecuting attorney of that city has a force of assistants and clerks and handles all misdemeanor cases.

Furthermore, it is error for the court to fail so to instruct even though counsel for the defendant does not call the attention of the court to such failure or offer an instruction himself upon those phases of the case upon which the court has omitted to instruct the jury. While these instructions are given and read to the jury by the court, they are, in a civil case, seldom prepared by the judge, but are furnished by counsel. In a criminal case, however, counsel for the defendant may offer no instruction, relying upon the statutory duty of the court to give all necessary instructions. While a goodly percentage of the instructions in criminal cases are conventional and are often furnished in printed form, yet there are many occasions when the evidence presents an issue not covered by such an instruction. In such event the court must offer a new instruction or a stock instruction in modified form. This need presents to the prosecutor not only a rare opportunity to serve the cause of justice but probably a definite legal responsibility as well. Yet the survey has established the fact that the prosecuting attorney is not preparing any of the instructions in about one-fourth of the counties of the state. Of the remainder of the counties about one-half of the prosecutors prepare instructions when requested to do so by the court, about one-fourth prepare instructions only in important cases, and the remainder prepare all of the instructions in every felony case.[1]

THE AID OF ARRESTING OFFICIALS IN PREPARING CASES

It is of supreme importance that the officer of the state upon whom devolves the duty of preparing and presenting the state's case, get on the ground and procure the names of witnesses and interview them while the evidence is fresh. In some of the large cities the prosecutor has sufficient assistance to enable him to meet this situation, but in the country districts this presents the most troublesome phase of the criminal prosecution. In some counties the sheriff takes the position that it is not his duty to interest himself in getting the names of witnesses or assisting in the preparation of the state's case, but, on the contrary, must maintain a neutral attitude because of the fact that the law requires him to serve summons upon jurors who may sit in the case and to have custody of the jury during the trial. It is not an uncommon practice in some counties in Missouri for defendant's counsel to move to disqualify the sheriff from summoning jurors or having charge of the jury, if that officer has interested himself in any way in the preparation of the state's case.

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[1] It is the duty of the prosecuting attorney to prepare the case on the law and know the latest applicable law to each case. This would seem to involve the duty of preparing instructions.

There would seem to be some ground for this position. Section 11648, R. S. Mo. 1919, provides that the sheriff shall be disqualified in any case "where it shall appear to the court that the sheriff is interested in the suit." Upon a showing that the sheriff had made a search for witnesses, had interviewed them, had taken their statements in writing or brought them before the prosecuting attorney for questioning or had questioned the defendant in an effort to get a confession, the court might very well take the position that this evidence tended to show "interest in the suit" or certainly an interest in the outcome of the suit.

Moreover, at this stage occurs an opportunity to shift responsibility as between the prosecuting attorney and the sheriff where there is factionalism or where a general lawless condition exists. The prosecutor in such case is likely to contend that it is not his duty to keep the peace or prevent violation of law but to prosecute offenders only when someone will make an affidavit upon which a prosecution can be based, or will furnish the prosecutor with sufficient information upon which to start the prosecution; and the sheriff is prone to say, in answer to criticism for his failure to act under such circumstances, that his duty under the law is to serve process when the same is placed in his hands by the officials of the court, and to make arrests for offenses committed within his view; and that there is no duty devolving upon him by law to do police duty or to ferret out crime.

While the questionnaires returned by the prosecutors indicate that the sheriffs and constables in about 75% of the counties in Missouri are assisting the prosecutor in preparing cases, this may and probably does amount to very little real assistance. In about one-half of the remaining counties these officers give little or no assistance at all to the prosecutor. In this latter class of counties the worst conditions prevail.

The maximum of co-operation between these two officers is essential to efficiency because without it there can not only be no effective prosecution but in the controversy between the prosecutor and the sheriff too great an opportunity is afforded for the criminal to escape arrest and prosecution altogether. It should be made the clear duty of the sheriff to exercise initiative in the preservation of the peace and the suppression of lawlessness in the county, and to locate and interview witnesses as well as to serve process and make arrests for crimes committed within his view.[1] If there is any conflict between those duties and his duties as a process server, then the law should be amended to reconcile that conflict. The recommendation of a state police made in this survey is very important from the standpoint of the prosecutor's preparation of a case. Such an organization in important cases might offer details of men including trained detectives to prosecutors in need of such assistance. It is obvious that such facilities would be of immense aid in collecting and sifting evidence.

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[1] See page 62.

In Kansas City three police officers and one deputy sheriff are assigned to the office of the prosecuting attorney to assist in interviewing witnesses and working up the case. Approximately one-half of the work involved in interviewing witnesses and preparing statements is performed by the arresting officials. Only about 50% of the cases brought into that office are handled in this manner. In the remaining cases the prosecuting attorney must interview the witnesses and take statements in person or through his assistants. By reason of the mass of work in the justice courts in preliminary hearings and the trial of misdemeanor cases, adequate questioning of witnesses is impossible, although an effort is made to get on the ground in the more important felony cases.

In the City of St. Louis practically every case comes through the Police Department. Policemen are sometimes assigned to the office of the circuit attorney to be used for the purpose of assisting in the preparation of cases, although controversy is not infrequent between the police and circuit attorney, and the situation is not conducive to much co-operation between them in this important matter.

St. Louis County, lying immediately adjacent to the City of St. Louis, probably presents the greatest problem in the state so far as the preparation of cases is concerned. The prosecuting attorney of that County of over 150,000 inhabitants and growing very rapidly, has but two assistants, a clerk and a stenographer, and the business of the office, by reason of its proximity to the City of St. Louis, is exceedingly heavy and important. He is unable to prepare his cases either on the law or the facts as well as the average case for the defendant is prepared. No more typical example could be given of the futility of trying to investigate and properly prepare and present the state's case where a metropolitan crime condition exists, with rural county equipment and limited by the laws applying to rural counties, than is presented in the situation in St. Louis County.

The Interviewing of Witnesses

After the prosecution is started, there does not seem to be any way by which the responsibility for the preparation of the evidence can be shifted from the shoulders of the prosecuting attorney. He should take as great a personal interest in getting the names of witnesses who know the facts about the crime as counsel for either of the parties in a civil case. If he is unable to go on the ground himself, he should be given the necessary help to the end that immediately upon receiving a report of the commission of a felony, he or his representatives may begin at once the locating of witnesses, interviewing them and taking their statements wherever possible, and moving for the detention of witnesses where it appears they are likely to leave the state. In no other way can the state's case be properly prepared. The delay of a very short time often results in the loss of the most vital evidence in the case, making it impossible to proceed with the prosecution. The more tardy the investigation, the less chance there is for justice to be done.

In approximately 50% of Missouri counties (49.26%) the prosecuting attorneys state they get on the ground and interview the witnesses while the evidence is fresh, although more than one-half of that number say they must do so at their own expense. In approximately one-third of the counties (32.7%) the prosecutor is able to do this only in the more important cases and always at his own expense. In the remainder of the counties they do not render such service at all.

The prosecuting attorney has no power to compel the attendance of witnesses before him, and lacking such power he is compelled to resort to the grand jury or the preliminary hearing to get statements of unwilling witnesses. However, the grand jury, in all but a few of the larger cities, is in session, if called at all, but a short time each year, and it is not always necessary or advisable for the state to produce all of its witnesses at the preliminary hearing.

In the greater number of cases the witnesses if seen shortly after the crime is committed are willing to make a written statement, under oath if requested, of the facts of the case within their knowledge. It is of the utmost importance to have such a statement, not only for the purpose of refreshing the recollection of the witness later, but to bind him, so far as such a statement can bind him, in order to guard against any change of his story or lapse of memory. Therefore, every effort should be made to take such statements as soon after the crime is committed as the witnesses can be located. If the witness will not come to the office he should be seen where he is available, his statement prepared in writing and signed. This practice, which is so generally followed in well prepared civil cases in the country circuits as well as in the cities, is not followed by the prosecutors of the state to any considerable extent. About 25% of them claim they get such statements in practically all felony cases where the witnesses are willing to talk; a large majority of the others make no effort to get such statements at all, and the remainder usually stop with notifying the persons whose names were obtained from the prosecuting witnesses or from other sources, to come to the office for an interview, and if the witness does not come, they content themselves with subpoenaing them to appear at the trial and make no further effort to get a statement except to talk with them if they are in court and willing to converse when the case is set.

It might not be unprofitable to compare this condition with the system in the Federal Courts. The Department of Justice at Washington, of which the Attorney-General is the head, supervises and frequently takes charge of the preparation of the case. Special agents trained in investigation, work up the evidence. Instances of research and running down clews to complete the case requiring several years of investigation are not rare.

When the government announces ready for trial in a criminal case all the evidence to be had is usually ready to be presented. A high percentage of convictions and a wholesome certainty of punishments in the Federal Courts in felony cases are the result. A further consequence is the rarity of violations of the Federal Felony Statutes as compared with such violations in the State Courts. There is more respect for the Federal Courts and laws.

THE PROSECUTOR AND THE CORONER

In death cases the first official who has anything to do with investigating the causes of death and the determination of whether a crime has been committed is the coroner and his jury. The coroner's inquest is intended to fix responsibility for death and to notify those officials whose duty it is to prosecute if it is found that the circumstances indicate a crime has been committed. This inquiry is of ancient origin and was, no doubt, in the beginning a fairly effective agency in lieu of a better, but in modern practice in Missouri it falls far short of its former utility. Upon the other hand, it acts, in many instances, as a positive hindrance to the administration of justice. The very superficial investigation before the hearing and examination of witnesses at the inquest, often results in diverting attention and effort from the proper channels, and sometimes affords an excellent opportunity for subverting proper prosecution by an exoneration. While the law provides that a justice of the peace or judge of a court of record shall be notified by the coroner if the jury finds that the death was the result of a felony[1] yet the only law in this state requiring the prosecuting attorney to be notified and present at the inquest is one of doubtful application except in the City of St. Louis.[1] Questionnaires addressed to coroners and prosecutors brought responses indicating that the prosecutor is not present at the inquest in a large majority of the counties outside of the City of St. Louis, where he is required by law to be present.[2]

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[1] R. S. Mo. 1919, Secs. 5930-31.

It is of vital importance that the prosecutor be present at every inquest, or other inquiry into the cause of death where the death is unexplained, and may have been the result of felony. The coroner or medical examiner should be required to notify the prosecutor immediately of every such hearing and the prosecutor should be required by law to attend. Who, we may well inquire, of all the officers of the law charged with the administration of criminal justice is, or could be, more directly interested in the causes of such a death? And if it is his duty to collect, prepare and present the evidence then would it not seem reasonable that he should be one of the first on the ground in a homicide case? In no other manner would it appear possible for him properly to discharge his duty to the state.

DELAYS AND CONTINUANCES

Lack of preparation, resulting in absence of witnesses, is definitely associated with delays so often resulting in defeats of justice. The trial judges of the state were asked the principal reason for delays in their courts. 70% of them replied that absence of witnesses is the principal reason. The others answered: "State not ready," "Dilatory tactics of defendant's counsel," "Failure of counsel to prepare," "Agreements of counsel," "Threat of change of venue," [3] "Congested docket," etc. In Kansas City one judge gave "Prosecution not ready" and another "Lack of time to try" as the principal reasons. Both judges are presiding in the criminal division. In St. Louis all the judges agreed that absence of witnesses is the chief cause of delays.[4]

The writer has made a personal observation of this phase of prosecution over a period of several months in the criminal courts of St. Louis. Often he has noted cases continued on account of the absence of witnesses for the state. In some of such instances investigation showed that the witnesses had never been subpoenaed, the return of the sheriff on the subpoena being "not found." A further investigation has disclosed in some of such instances that the wrong address was noted upon the subpoena.

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[1] R. S. Mo. 1919, Sec. 777.

[2] See page 89.

[3] The law of 1921 (S. A. 1921, p. 206) making it mandatory upon the judge to grant a change of venue upon affidavit signed by five citizens of the county in counties of less than 75,000 inhabitants, is a prolific cause for delay throughout the state.

[4] See page 326 for statistical data on delays and continuances.

Only recently one of the judges dismissed a case for want of prosecution because the state requested the fifth continuance on the ground of absent witnesses. The prosecutor replied that it was through no fault of his because it was the duty of the clerk to issue subpoenaes and of the sheriff to serve them. This is technically correct. The clerk does sign the subpoena and puts upon it the seal of the court, and it is the duty of the sheriff to serve the subpoena if the witness can be found or his home located. But no prosecutor will ever be able successfully to avoid responsibility for failure to have subpoenaes properly prepared, containing the correct name and correct address of the witness and placed in the hands of the sheriff or some other person authorized to serve the same, a sufficient length of time before the date set for the trial to give the process server time to serve it upon the witness. As the attorney for the people, in charge of the preparation and presentation of the case, that is his duty. And it is further his duty to follow up that process and see that it is served upon the witness. It is his duty to require witnesses to give bond for their appearance at the trial, if necessary to secure their attendance at the trial.[1] In civil cases the attorney for the plaintiff would be regarded as grossly remiss in his duty to his client if he did not take every necessary step to insure attendance at the trial of all necessary witnesses on his side of the case. No good reason appears why the attorney for the state should be any less concerned for the interest of his client and the welfare of his case. It is one of the duties that is inherently imposed upon him by virtue of the very nature of the relation, wholly apart from any statutory authority or direction.

The continuance is the first move in the strategy of the defendant. Delay is the coveted advantage—the most reliable weapon of the defense. Continuances and delays because the state is not ready, are largely chargeable to the prosecutor. There are, of course, instances when delays through the failure of witnesses to appear, necessarily occur and for which the prosecutor is not responsible, as when they are ill, or unavoidably detained, or absent from the county, but in the first instance it is the duty of the prosecutor to see that the state's witnesses are in court when the case is called and that duty is not discharged by shifting the responsibility in case of failure, to the clerk whose duty it is to issue process, nor to the sheriff whose duty it is to serve it.

Forfeited Bail Bonds

The survey developed that of many judgments in forfeited bail bonds[1] there was practically nothing collected. In the cities bail bond abuses are most glaring. Much controversy has arisen in the past between the prosecutor, the sheriff and school boards with respect to failure to collect such judgments. The school boards are interested because the money, when collected, goes into the public school fund of the county.[2] The sheriff must make the levy on and sell the bondsman's property to satisfy the judgment, when the writ of execution is placed in his hands, provided he is able to find any property belonging to the defendant. There is no duty devolving upon him to make any investigation to locate property upon which to levy the execution. The statute clearly imposes the duty upon the public prosecutor to "prosecute actions for penalties and forfeitures accruing to the state or county."[3] This would seem to include following the prosecution through to the end, so that judgments may be collected. In no other way will these judgments ever be collected, or the interests of the state properly cared for.

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[1] R. S. Mo. 1919, Sec. 3828.

If the defaulting bail bondsman has no property when the judgment of forfeiture is entered, the prosecutor should ascertain whether any transfers of property have been made which may be set aside, and prosecute such cases to final conclusion: in other words, do for the state what counsel for the plaintiff in a civil case must do if he discharges his full duty to his client. The prosecutor should also report to the court every case of forfeited recognizance and instances where no property can be found to satisfy judgments in such cases. If the prosecutor does his full duty in these cases and the courts will refuse to accept on bonds persons of doubtful financial responsibility or who have defaulted in payment of any forfeited bond, there would be no "bail bond evil."

OFFICE RECORDS

It has been established in the survey that many felonies are committed for which there is no prosecution. Except in St. Louis there is no adequate record kept by any official indicating the number of complaints lodged with the authorities on all felonies committed. Therefore, it has been impossible to get a record of all felonies committed, and no way of determining with accuracy the number of unsolved crimes except in that city.[4] Furthermore, there is no record kept by any official of warrants applied for and refused except in some of the large cities. In the City of St. Louis, the circuit attorney does not keep a record of warrants applied for by the police department and refused by him, although one of his assistants is in charge of what is termed the "warrant office" and keeps a record of warrants issued together with a transcript of the testimony of the witnesses appearing before him at the time the warrant is applied for. It would be a simple matter for the circuit or prosecuting attorney to keep such a record because he is the only official to whose attention every case is most likely to come. But this is done only in a few scattering counties not covered by the case investigation.

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[1] See page 199.

[2] R. S. Mo. 1919, Sec. 11584. State ex rel v. Warner, 197 Mo. 651.

[3] R. S. Mo. 1919, Secs. 736-3927.

[4] See Tables pages 543-545 for figures for St. Louis and partial police records in Kansas City.

A record of warrants issued and an office docket or file upon which is entered each step in every case in the prosecutor's office would seem to be essential to the efficient conduct of the duties of this office, especially in the more populous counties, but the prosecutors in very few of the counties keep such record. Many of the prosecutors (about 70%) state that they consider such a record important, but do not keep it because of lack of clerical help. In some such instances, however, those making that point say they are devoting a considerable portion of their time to private practice.

THE USE OF THE POWER OF NOLLE PROSEQUI

Probably the most far reaching power given to this official is that of disposing of the case by nolle prosequi. A nolle prosequi may be described as any action by the public prosecutor dismissing the case and recording his declaration that he will proceed no further with the prosecution. This power is solely in the prosecuting attorney at any time before the jury is impanelled. The court has no power to enter a nolle pros. or to direct the prosecutor to do so.[1] At common law the rule was that the court had no power to refuse to discharge the prisoner after a noll pros. was entered, and this rule still prevails except where changed by statute. There is no statute in Missouri on the subject, so the common law rule prevails.

In some states there is limitation upon this power.[2] The survey shows that about one-fifth of the prosecutors of the state file a memorandum when dismissing a case, stating not merely that the case was dismissed for insufficient evidence, but setting out in full their reasons for taking the action. Those who follow this practice indicate that it is done for their own protection. All of the other prosecutors state that they do not follow the practice at all. A scattering few see no necessity for such action, and the others state that they would have no objection to making such a record and expect to do so in the future.

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[1] State v. Mathews, 98 Mo. 125.

[2] In Pennsylvania, by stringent statutory provisions the prosecutor is prohibited from entering a nolle at any stage of the proceeding without the written consent of the court.

In Georgia the prosecutor may nolle a case before submission to the jury only with the consent of the court, and after submission only with the consent of the defendant.

The prosecutor in Indiana is permitted to order a nolle pros. only upon written motion read in open court setting forth the reasons for the action and with the consent of the court and the mere number of prosecutions against the same person shall not be a reason for dismissing any of such cases.

In New York the court of its own motion or upon motion of the prosecutor may order an action dismissed, and the power of the prosecutor to enter a nolle pros. is abolished.

THE TRIAL

The "mortality" figures seem to indicate that the least important of the duties of the prosecuting attorney is the trial of he case. The very high percentage of all cases coming into his office that are disposed of before trial do not tell the whole story, however, because the cases actually tried represent the more serious crimes in which there is the greatest public interest and demand for punishment. It is essential, therefore, that the prosecutor should be in a position vigorously and ably to present these cases so that justice may be done. Assuming that the case for the state has been properly prepared, both on the facts and the law, it must be properly presented to the jury or all previous preparation goes for naught.

In the trial the prosecutor is confronted with many statutory disadvantages. The court instructs the jury in every criminal case that the burden is upon the state to prove the defendant's guilt beyond a reasonable doubt; that the defendant is presumed under the law to be innocent until his guilt is proven to the satisfaction of the jury beyond a reasonable doubt. The defendant does not have to take the stand. If he does not take the stand his reputation is not in issue and though he may have served any number of terms in the penitentiary, evidence of that fact is not admissible except where the defendant is charged under the habitual criminal act. If the defendant does take the stand, the prosecuting attorney is limited in his cross-examination to matters brought out by the direct examination. It very often happens that a defendant will testify upon direct examination to such unimportant facts as his name, age and occupation. The prosecutor cannot question him on cross-examination as to a

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In Texas the prosecutor, with the consent of the presiding judge and upon filing a written statement with the papers in the case setting out the reasons therefor, may enter a dismissal. One of joint defendants may be discharged and used as a witness against the other.

In Kentucky, before the court shall permit the prosecutor to nolle pros. a case, the prosecutor shall file a statement in writing setting forth the reasons for the action which is entered upon the order book of the court and bcomes a part of the permanent record in the case.

In West Virginia if any prosecutor shall "compromise" or "suppress" any indictment or presentment without the consent of the court entered of record, he is deemed guilty of malfeasance in office and shall forfeit his office. A confession of judgment in prosecutions for misdemeanors shall not be taken where there is a specified fine or penalty, for a less sum than so specified.

single fact concerning the manner in which the crime was committed. If the defendant did not take the stand the prosecuting attorney in his argument is forbidden by statute to make reference to the fact. But the court may instruct the jury that the fact that the defendant did not take the stand is not to be taken as any evidence of his guilt. These restrictions upon the argument of the prosecutor and the limitations upon his power of cross-examination are not understood by the jurors and they are often, as a result, greatly confused by them. Add to this confusion the charge to the jury concerning the presumption of innocence of the defendant and the necessity for the state to prove his guilt beyond a reasonable doubt, and the result is often a surprising miscarriage of justice.

If the prosecutor, by any chance, is unfamiliar with the rules of law in respect of these matters, and in his argument or cross-examination of the defendant transgresses the prohibitions of the statutes (even though the defendant may be found guilty by the jury) the Supreme Court is compelled, under our code of criminal procedure, to reverse and remand the case on account of the error.

The state has the closing argument. Upon the prosecutor rests the great responsibility of presenting the case to the jury in this last word before they go to the jury room. He must believe in his case and present it with sufficient force and logic to impress the jury that the defendant should be convicted, but at the same time must respect the rights of the defendant under the law and do or say nothing calculated to inflame the minds of the jury against the defendant that is not warranted by the evidence. It is a delicate task. An earnest, conscientious, able prosecutor in the closing argument can do much to prevent the many deplorable miscarriages of justice. On the other hand, many a guilty criminal has escaped either at the hands of the jury or later by the courts because of the failure of the prosecutor to measure up to this responsibility.[1]

BARGAINING FOR PLEAS OF GUILTY

A striking feature of the facts gathered in this investigation is the large number of punishments inflicted upon pleas of guilty.

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[1] An eminent authority on criminal law and procedure makes these pointed remarks concerning the qualifications of the public prosecutor:

"PROSECUTING OFFICER—In all our state and national tribunals, criminal prosecutions are carried on by an officer chosen for the purpose. He has great power: he can ordinarily prevent the grand jury from finding an indictment; for he is their adviser, and he draws it. And after it is found he can refuse to prosecute it. He should, therefore, possess that element of a great lawyer, integrity, in the highest degree. In mental habit he should be exact, and his legal learning should be the amplest. One thus endowed need never permit an offender to escape from a defect in the indictment, though the judges hold him strictly to the old rules. And if the people confer the office on an aspirant whose sole qualification is that he can bawl loud and long at the caucus, they ought not to complain when criminals escape through his blunders or slothfulness," Bishop's New Criminal Procedure, Sec. 26.

Omitting liquor cases, treated separately, over 80% of persons receiving some kind of punishment, have pleaded guilty. A discussion of the relation between such pleas and punishment will be found in the statistical analysis.[1] The popular impression is that when an offender enters a plea of guilty he throws himself upon the "mercy of the court." As a practical proposition he does nothing of the kind. He has already thrown himself upon the mercy of, or struck a bargain with, the prosecutor, before he takes his plea. The court usually accepts the recommendation of the prosecutor as to the punishment on plea of guilty.

The facts show that in the cities a penitentiary sentence follows a conviction by the jury in a much higher percentage of cases than where sentence is imposed upon a plea of guilty, and that a plea of guilty upon arraignment reduces the chances of a penitentiary sentence in the cities by about one-half.

In the counties, however, the larger number of sentences to the penitentiary occur when the defendant pleads guilty, even though he has entered a plea of not guilty when arraigned, and changed his plea to guilty after arraignment, when the case is ready for trial. Furthermore, a plea of guilty to a lesser offense than charged, which must always be with the consent of the prosecutor, does not seem to help the defendant in getting a relatively lighter sentence in the country districts as it does in the cities. And an original plea of guilty appears not to have the tendency to keep the defendant out of the penitentiary to the extent that it does in the cities. These facts are quite significant. They indicate very clearly that the country prosecutor has a sterner sense of duty and justice than the prosecutor of the city, and that experience has taught the criminal in the country circuits that the juries, too, are impatient of crime and criminals. If the country prosecutor is hard to manage it would seem that the juries are harder.[2]

In the cities, however, the prosecutors have an immense volume of cases before them constantly and the tendency is to dispose of as many of them as possible by guilty pleas. This lessens the work and is usually fairly satisfactory to the prosecuting witness and to the public. This tendency generally results in negotiation and bargaining between the prosecutor and counsel for the defendant. If the prosecutor is sure of his case the terms are apt to be hard. If the state's case is weak because of lack of preparation, absent witnesses, or the congestion of the docket, the defendant may get what he regards as a good bargain by taking a plea of guilty. Many prosecutors have an inordinate fear of trying a weak case. As a matter of fact, the case may be weak because the prosecutor himself is weak, or (as is more often true) conscious of lack of preparation, but he is likely to agree to very liberal terms if he feels that there is serious doubt about the result of a jury trial. A common practice in cases of this kind is bargaining for a plea in consideration for a parole. In this way many defendants escape with no punishment at all. In such cases the defendant is usually most willing to plead guilty and take a heavy paper sentence in the penitentiary. The survey shows this practice more common in the country than in the cities. The relation between pleas of guilty and such paroles and commutations is shown in the following table:

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[1] Table XIII, page 315.

[2] In one of the larger counties of the state our survey, covering one year, showed no acquittals by juries in a felony case. A further examination disclosed only three acquittals by juries in such cases in ten years. A letter from an experienced lawyer of very high standing in that circuit who seldom takes a case for defendant but is often retained as special prosecutor in important felony cases, explains one of these acquittals. He says: "In one of these cases the defendant was charged with trapping a mink out of season. The jury were nearly all poultry raisers and were not much in favor of a closed season on minks."

TABLE III

Relation Between Pleas of Guilty and Commutations and Paroles

Commutations	P. G. to Lesser Offense	P. G. as Charged	P. N. G. Changed to Plea G. as Charged	P. N. G. Changed to P. G. to Lesser Offense	Tried and Found Guilty	
St. Louis City	—	11	7	3	4	
Jackson County	—	—	—	—	—	
Buchanan County	—	—	—	—	—	
State	1	40	9	—	2	
Totals	1	51	16	3	6	Pl. of G. 71 Trials 6 77
Paroles						
St. Louis City	6	15	1	8	4	
Jackson County	–	23	5	4	2	
Buchanan County	1	2	2	3	—	
State	30	187	23	10	18	
Totals	37	227	31	25	24	Pl. of G. 320 Trials 24 344

In every felony case the defendant may be punished by imprisonment in a state penal institution, although the penalties are often graduated so as to permit of a fine or jail sentence. The court has power in some cases, depending upon the age of the prisoner, to commute the penitentiary sentence to confinement in the Boonville Reformatory. Lenient treatment and the prospect of an early release on parole from the latter institution is well known among criminals and their counsel so there is usually a strong effort made to get such a commutation if the defendant is eligible under the law to serve in the reformatory. Punishments of fines, jail sentences and commutation to the reformatory, therefore, play an important role in the negotiations between the prosecuting attorney and counsel for defendant. The large number of cases in which such punishment was assessed in lieu of a penitentiary sentence in cases of pleas of guilty as is well shown by Table XIII, is the result. In all such cases the punishment is fixed, practically speaking, by the prosecuting attorney, because the court must and does rely upon the representative of the state for his recommendation and usually enters the judgment agreed upon.

APPEALS

Appeals from the circuit court to the Supreme Court are handled in the latter court by the attorney general. The practice and procedure provide for an affidavit for appeal and bond to be filed in the circuit court by the defendant after conviction. Upon allowance of the appeal and giving bond, the defendant has his liberty until the case is disposed of in the Supreme Court. The allowance of the appeal deprives the circuit court of jurisdiction to proceed further with the case. The statute allows the defendant twelve months after the appeal is allowed to perfect the appeal in the Supreme Court by filing a short form of the transcript with the clerk. If the appeal is not perfected the court has no record of the case unless brought to his attention by the attorney general after the time for perfecting the appeal has elapsed. Upon the court being apprised that the appeal is pending and not perfected the court will affirm the judgment of conviction and send a mandate of its action to the circuit court, whereupon that court executes the sentence. During the period from the allowance of the appeal and the date the same should be perfected, the case is not before either court. This situation has given rise to the so-called "Supreme Court shuffle." The prosecuting attorney considers himself under no duty to follow up the case to the Supreme Court, and the attorney general or the Supreme Court has no record of it unless the appeal is perfected, so it has often occurred that the time for perfecting the appeal passes and nobody pays any attention to it. As a result, the defendant is at liberty indefinitely unless someone voluntarily takes notice of it and brings it to the attention of the authorities. This hiatus in the law should be corrected by requiring the prosecuting attorney or the clerk to certify to the attorney general the date of appeal and other facts of record so that official may promptly move for affirmance of the judgment if the appeal is not perfected. Inquiry has developed the fact that about one-third of the prosecutors of the state (36% to be exact) give the attorney general such notice, although under no duty to do so. The others pay no attention to the case after the appeal is allowed. The statute should be so amended as to cover this defect, and also to reduce the time allowed for perfecting the appeal. The views of the prosecutors were taken as to the advisability of shortening the time, and 89.73% of them favored such an amendment.

The Prosecution of Liquor Cases

The survey confirms the popular impression that offenders against the state prohibition laws are prosecuted much more vigorously and effectively in the country districts than in the cities. The investigation covered only felony cases, but manufacture, sale and transportation of liquor described in the statute as "hootch" or "moonshine" may be prosecuted as felonies. Mere possession of such liquors is made a misdemeanor. The felony provisions were calculated to put teeth into the law. It has teeth in the rural districts. It has some in the urban sections of interior Missouri. It has none in the cities.

During the period covered by the survey, October 1, 1923, to October 1, 1924, in the three large cities a record of 2112 liquor cases classed as felonies was taken. The circuit attorney of St. Louis refused warrants in 77.76% of cases where warrants were applied for by the police. In Jackson County warrants were refused in 57.16% of similar cases.

The actual figures for St. Louis City, Jackson and Buchanan Counties and thirty-six other counties may be found in Tables XA and XI[1] which, however, did not include all liquor cases but only a fair example taken consecutively from the records. In St. Louis out of 697 consecutive cases in which the police applied for warrants as for felonies, only 155 such warrants were issued. Of this number 145 were disposed of as misdemeanors in the preliminary hearing, 2 were discharged, one was continued generally, leaving but 7 cases where the defendants were bound over on a felony charge. The circuit attorney refused further to prosecute 2 of these, leaving 5 which went into the circuit court for trial. In that court one was discharged by the court, and one was tried and acquitted, leaving but three receiving any punishment. However, each of these received fines which might have been assessed if the charge had been a misdemeanor instead of a felony. The small number of all of such cases which were filed in the circuit court as felonies may as well have been included among those which were reduced to misdemeanors at the preliminary hearing, thus saving the state a considerable expense for the prosecution for felony. The inevitable conclusion to be drawn from this record is that the violation of a state liquor law in St. Louis is not regarded as of sufficient gravity or importance to warrant a prosecution on a felony charge.

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[1] Pages 303-310.

The record in Jackson County indicates fewer warrants on felony charges refused, but in the final analysis, it is as conclusive as in St. Louis that there is no such thing as punishment of felony calibre in a liquor case. Out of 719 such cases in Jackson County warrants were refused in 413 instances. Of the 306 warrants issued, 257 were reduced to misdemeanor and disposed of before the justice of the peace at the preliminary hearing, 10 were discharged in that court, 19 were dismissed for want of prosecution, in 3 cases no record could be obtained, leaving but 17 bound over. All of these went into the circuit court on felony charges, but the prosecuting attorney nolle prosequied 10 of them, 1 was discharged by the court, 3 were tried and acquitted, and in 2 cases no record could be found, leaving but 1 sentenced and punished on a felony charge, and he was fined.

The record in Buchanan County tells a slightly different story. No warrants in liquor cases were refused. 35 warrants were issued, 8 were discharged, 2 were held on a reduced charge as for misdemeanor, 1 was dismissed for want of prosecution, 1 was nolle prosequied, 1 was continued generally and in 1 case no record could be found, leaving 21 cases bound over and charged in the circuit court as felonies. 10 of these cases were nolle prosequied in the circuit court by the prosecuting attorney, and the court discharged 4. Of the remaining 7, 2 were paroled, 2 went to the reformatory at Boonville, 1 was committed to jail, 1 was fined and 1 fined and committed to jail.

The record in interior Missouri is quite at variance with that in the larger cities. From these counties, during the two year period covered by the survey, 40 persons were sentenced to the penitentiary for violation of liquor laws, out of 660 against whom warrants were issued. A notable feature of this variance is that in 36 interior counties out of 660 warrants issued charging the defendants with felonies, only 8 were disposed of as misdemeanors in the court of preliminary hearing, while in St. Louis and Kansas City, out of 461 cases in which warrants were issued, 402 of them were thus disposed of.

The nolle pros. is employed in the interior counties to dispose of about one-fourth of liquor cases getting into the circuit court as against about 20% in other felony cases. The more urban the interior counties are, the more liberal becomes the use of the nolle pros. in liquor cases, ranging from 39.68% in the three counties showing 50 to 60% urban population, to 9.76% in counties having only 20 to 30% urban population.

The tendency of juries in the rural communities to convict persons charged with violations of these laws is reflected in the record that in the thirty-six counties together, only 2.73% of acquittals by juries are shown. This ranges from 4.76% in counties containing 50 to 60% urban population, to no acquittals in the group of counties having but 10% urban population.

These figures very clearly establish the fact that there is a vigorous and effectual effort at the enforcement of these laws in the country, and beyond the very ineffective effort which results from the assessment of small fines on charges of misdemeanor, there is little effective attempt at their enforcement in the large cities.

Much of this is doubtless due to the attitude of the people themselves. The strong public sentiment in favor of these laws in the country encourages vigor and vigilance in their enforcement. By the same token an indifferent if not hostile attitude toward the laws which seems to exist in the cities begets laxity in their enforcement.

PROSECUTION IN ST. LOUIS COUNTY

We have already indicated that because of the combination of a very high tide of crime with very inadequate prosecuting facilities, St. Louis County has a very serious problem of law enforcement. The following statistics have been compiled to indicate the exact character and significance of this problem.

The following indicates the mortality of felony cases in that county other than liquor cases, beginning with the issuance of the warrants and ending every case with final disposition:

TABLE IV

MORTALITY TABLE ST. LOUIS COUNTY

A. Warrants Issued		443
B. Preliminary Hearing		
1. Discharged	73	
2. Disposed of as Misdem.	5	
3. Dismissed Want of Pros.	24	
4. Nolle Prosequi	6	
	108	108
C. To Grand Jury or Circ. or Pros. Atty.		335
1. No True Bill		
2. No Information	2	
	2	2

D. To Circuit Court		333
1. Nolle Prosequi	101	
2. Disposed of on Action of Court	15	
3. Tried and Acquitted	23	
4. Other Dispositions[1]	31	
	170	170
E. Sentenced		163
1. Paroled	54	
2. Appealed	8	
3. Other Dispositions	1	
	63	63
F. Punished		100

The following indicates the problem in another way by setting forth the nature of sentences and the character of the execution of each:

TABLE V

Nature of Sentences and Their Execution in St. Louis County

Sentenced to		Paroled	Commuted to Ref.	Deferred	Appealed	Committed to Inst. or Fines Pd.
Penitentiary	105	22	8	—	6	69
Reformatory	9	5	—	—	—	12
Jail and Fined	6	2	—	—	1	3
Jail	27	25	—	—	1	1
Fined	15	—	—	—	—	15
Deferred	1	—	—	1	—	—
Totals	163	54	8	1	8	100

TABLE VI

Nature of Pleas in St. Louis County

Not Guilty	97
Guilty as Charged	84
Guilty to Lesser Offense	19
Not Guilty, Changed to Plea of Guilty	22
Not Guilty, Changed to Plea of Guilty to Lesser Offense	12
	234

TABLE VII

Trials by Jury in St. Louis County

Tried and Acquitted	23
Tried and Found Guilty as Charged	20
Tried and Found Guilty to Lesser Offense	6
	49
Sentenced on Plea of Guilty	137

If the pleas of guilty, 137, are deducted, only 26 persons were punished out of 443 charged with a felony in the two year period from October 1, 1922, to October 1, 1924.

The record in liquor felony cases indicates little improvement over the cities. Out of 107 warrants issued, there was not one trial had and only 9 were punished. 5 of these were given short jail sentences, and 4 were fined. In 18 cases bail was forfeited, never collected and the defendant never apprehended. Out of 443 warrants issued in non-liquor felony cases only 49 trials were had, nearly one-half of which resulted in the acquittal of the defendant. Nearly one-third of the cases coming into the circuit court during this period were nolled by the prosecuting attorney.

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[1] This term "other dispositions" refers to miscellaneous dispositions not falling within any statistical classification.

MAJOR FINDINGS AND CONCLUSIONS

1. The public prosecutor in Missouri is possessed of more power over criminal cases than any other official in the state, not excepting the judges.
2. This power is being liberally exercised by the prosecutors, especially in the cities, to stop prosecutions and release persons charged with crime before trial.
3. The Grand Jury as the primary agency for initiating criminal prosecutions has given way to the prosecutor, only 11½% of such prosecutions having been started by action of the Grand Jury during the period of the survey.
4. The laws providing for a preliminary hearing where prosecutions are started by the prosecuting attorney as a check upon his power has proven utterly impotent for that purpose and result in nothing but expense, delay and advantage to the defendant.
5. In the entire state, represented by one county in each judicial circuit, during the period covered by the survey 7032 warrants were issued and 2232 received some kind of punishment, but of those who were punished 1832 or 82.08% were confessed felons, sentenced and punished on pleas of guilty.
6. Bargaining for pleas of guilty between the prosecutor and defendant or his attorney result in many minimum sentences, and pleas of guilty are often entered after agreement by the prosecutor to recommend a parole, commutation to the reformatory, a short jail sentence or a fine.
7. It is the duty of the prosecutor to prepare the evidence and the law in every case, but in many counties of the state he is unable to fully perform this duty because of:
   a. Lack of co-operation of arresting officials in procuring the evidence;
   b. Lack of assistance which would enable the prosecutor to interview witnesses while the evidence is fresh and prevent absence of witnesses;
   c. Lack of library and other facilities necessary to prepare cases on the law.

8. The right of the prosecutor to dismiss criminal prosecutions started by him and by the Grand Jury is absolute and may be exercised without the consent of the court, contrary to the rule in many other states where a statement in writing is required to be filed by the prosecutor setting out in full the reasons for dismissal and requiring the court to pass upon the stated reasons and to consent to the dismissal.

9. In practically every county in the state outside of the large cities of St. Louis, Kansas City and St. Joseph, the public prosecutor is allowed to engage in private practice which the survey shows in many instances has resulted in partial neglect of official duties.

10. Salaries in many counties are inadequate.

11. Prosecutors in Missouri are largely drawn from the younger and more inexperienced members of the bar. It would seem that about 40% have not graduated from any law school and that the preliminary education of many is quite limited.

12. In murder cases the first inquiry is at the coroner's inquest, where opportunity would be given to produce and examine witnesses while the evidence is fresh in their minds. The prosecutors outside of St. Louis are not required to attend this hearing and many of them do not attend inquests. There is no provision whatever for a transcript of the evidence at such hearings to be prepared and it is seldom done except in St. Louis, Kansas City and St. Joseph.

13. Delays in prosecution are mainly due to the action of the prosecutors in failing to have witnesses in court or in agreeing to continuances with counsel for defendant.

14. Little effort is being made by the prosecutors of the state especially in the cities where the bail bond situation is acute and demoralizing, to follow through forfeitures on such bonds to the point of recovering the penalty thereof for the benefit of the schools.

15. Office records of the prosecutors in the large cities and in a great many of the smaller counties are in the main well kept, except there is no record in any of these offices of criminal complaints and warrants refused.

The importance of keeping such records, especially where warrants are applied for by the police who have investigated the case and produced the witnesses, is well illustrated by the record procured in the survey through other offices than that of the prosecutor in the cities of St. Louis and Kansas City. In St.

Louis from October 1, 1923, to October 1, 1924, the period of the survey, the circuit attorney refused to issue warrants in 972 out of 2464 warrants applied for. In Kansas City 363 out of 2060 warrants were refused, after the police had produced evidence thought by them to be sufficient to justify the issuance of warrants.

16. Appeals in felony cases are taken to the Supreme Court and when the appeal is allowed by the trial court, the prosecuting attorney has nothing further to do with the case; the hearing in the Supreme Court being handled by the attorney general. The defendant has a year to perfect his appeal in the Supreme Court. If he does not perfect it the attorney general has no notice of the fact that an appeal has been allowed. The prosecuting attorney having no further duties in connection with the case seldom pays any further attention to it after the appeal is allowed. Thus the opportunity is presented and frequently taken advantage of, for the case to be lost. Some prosecutors assume the duty of notifying the attorney general of all such pending appeals. Others do not. This is an obvious weakness in the law and should be corrected.

17. In one year, October 1, 1923, to October 1, 1924, the police of St. Louis obtained evidence in 697 cases of manufacture, sale or transportation of liquor which under state law are classed as felonies and applied to the circuit attorney for warrants. Warrants were refused in 542 such cases, leaving 155 issued. Of this number 145 were disposed of as misdemeanors in the preliminary hearing; 3 were discharged by the court; 7 bound over. The circuit attorney failed to further prosecute 2, and filed charges in the circuit court on 5. In that court 2 of the 5 were discharged and 3 were punished, receiving fines.

In Kansas City out of 719 warrants applied for by the police 413 were refused. Of the 306 cases in which warrants were issued 257 were disposed of as misdemeanors at the preliminary hearing, 13 were discharged by the justice of the peace, 19 were dismissed for want of prosecution and 17 bound over. In the circuit court 10 of the 17 were dismissed by the prosecuting attorney, 3 discharged by the court, 3 tried and acquitted, and 1 fined.

In Buchanan County 35 warrants were issued and none refused. Of these 8 were discharged, 2 reduced to misdemeanors, 1 dismissed for want of prosecution, 2 discharged by justice, 1 dismissed by prosecutor and 21 bound over. In the circuit court the prosecutor dismissed 10, the court discharged 4 and 7 were convicted. Of these 2 were paroled, 2 sentenced to Boonville Reformatory, 1 was fined, 1 committed to jail, and 1 fined and committed to jail.

In the balance of the state out of 660 liquor felony prosecutions, 58 were disposed of before charges filed in the circuit court. In that court 18 were tried and acquitted, 171 dismissed by prosecuting attorney and 167 by the court, leaving 246 sentenced. Of those sentenced 48 were paroled and 28 appealed, 40 were committed to the penitentiary, 1 to the reformatory, 54 to jail and the others were fined.

This survey did not cover suits filed in courts of equity to enjoin persons from maintaining places where liquor is sold by the use of the so-called padlocking provisions of the statutes because these actions are not criminal but civil in their nature. However, in St. Joseph and many country circuits, these actions have been used very effectively to suppress violation of the liquor laws and in many counties are relied upon rather as substitutes for the penal statutes.

18. The importance of selecting for these positions lawyers of standing, integrity, industry, ability and experience cannot be overemphasized.

The public prosecutor has more power and discretion in the processes of law enforcement than the circuit judge or any other official. A prosecutor who is lacking in ability, diligence and energy or who, for political or other reasons, may be inclined to temporize with the lawless elements or yield to the pressure for special favors can do more to break down the whole machinery of criminal law administration than probably all the other agencies together.

19. Lawyers qualified for the office of public prosecutor cannot be obtained unless the salaries are adequate. The salaries provided by the law of 1919 are measurably adequate and if continued will attract good men to the office, but the salaries now being paid under that law having been established on a wholly fictitious basis, the better qualified men will hesitate to offer themselves for the office until the salaries are more firmly established by an amendment to the law.

RECOMMENDATIONS

1. Prosecuting attorney should be required to devote entire time to duties except in counties of less than 12,000 population.

2. County court should be required to authorize employment of clerical aid and investigators to assist in preparation of cases upon certificate of necessity signed by circuit judge.
3. County court should be required to furnish the prosecutor with necessary library and office facilities upon certificate of necessity signed by circuit judge.
4. Amend and repeal existing laws with reference to preliminary hearings so that such hearings may be conducted by the circuit clerk or a commissioner appointed by the circuit court with a provision that no bail bond be accepted until approved by the circuit judge or circuit clerk in vacation.
5. Amend present laws that compel attendance of prosecuting attorneys at coroners' inquests when death apparently due to crime so as to leave no doubt of state-wide application.
6. Enact law providing criminal cases shall be dismissed prior to time when the jury is sworn only by the court upon written motion filed by the prosecuting or circuit attorney setting out in full the reasons therefor.
7. Enact a law requiring prosecuting attorneys to keep a permanent docket or record of all warrants applied for under oath and refused and showing progress and disposition of each case in which a warrant is issued.
8. Prosecuting and circuit attorneys should be required by law to certify to the clerk of the supreme court and to the attorney general every felony case in which an appeal is allowed.
9. The prosecuting or circuit attorney should be required by law to take all necessary steps for the collection of forfeited bail bonds.
10. Amend Laws 1919, page 672, so as to continue in effect substantially same salaries now being paid under that law so as to eliminate the fictitious basis for computing population.
11. Elect to the office of public prosecutor only men of proven integrity, ability and standing in the community.

PART IV

JUDICIAL ADMINISTRATION

By

ARTHUR V. LASHLY, LL.B.
Formerly Prosecuting Attorney St. Louis County
Member Missouri Constitutional Convention 1923-1924

and

J. HUGO GRIMM, Ph.B., LL.B., LL.D.
Formerly Circuit Judge St. Louis

ADVISORY COMMITTEE

Guy A. Thompson	St. Louis
Thomas C. Hennings	St. Louis
X. P. Wilfley	St. Louis
Herbert S. Hadley	St. Louis
Romulus E. Culver	St. Joseph
J. P. McBaine	Columbia

JUDICIAL ADMINISTRATION

By Arthur V. Lashly and J. Hugo Grimm

Jurisdiction of the Courts

The trial jurisdiction in felony cases in Missouri is with two exceptions in the circuit courts. There are thirty-eight of such courts in the state.

In Springfield a separate criminal court exists presided over by a judge elected from the circuit to that court. It has exclusive original jurisdiction for the trial of felony criminal causes.

In Marion County the Legislature has provided for a Court of Common Pleas located at Hannibal exercising exclusive original civil and criminal jurisdiction in Mason and Miller Townships in that county. The circuit judge of the 18th Judicial Circuit presides over this court. The statute creating the court provides:

> "Jurisdiction over offenses committed at the boundaries of Mason and Miller townships.—When an offense shall be committed on the boundaries of the said Mason or Miller townships, or within five hundred yards of said boundaries, or where the person committing the offense shall be on one side and the injury be done on the other side of said boundaries, an examination thereof may be made and an indictment may be found and a trial and conviction thereon had either in the said Hannibal court of common pleas or in the circuit court of Marion or Ralls counties."[1]

The circuit courts are by law made juvenile courts having jurisdiction in cases of delinquent and neglected children.

Then there are the courts of preliminary hearing. These hearings are had before justices of the peace in every county and city in Missouri except the City of St. Louis where such hearings are had before a statutory court known as the St. Louis Court of Criminal Correction. The preliminary hearing is had only in cases where the charge is initiated by the public prosecutor. That officer, since an amendment to the Constitution on November 3, 1900, has had concurrent power with the grand jury to begin felony prosecutions. When the charge is by indictment of the grand jury, no preliminary hearing is necessary, but where the defendant is charged by information of the prosecutor either upon his own information or upon the affidavit of the prosecuting witness, the defendant is entitled to a preliminary hearing.[1]

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[1] R. S. Mo. 1919, Sec. 13721.

These, then, are all the courts concerned with the administration of the felony criminal laws except the Supreme Court to which all appeals in felony cases are taken.

The procedure employed in the prosecution of felony cases has already been outlined.[2]

POWERS AND DUTIES

Preliminary Hearings.[3]

The courts of preliminary hearing play an unimportant role in the administration of justice. They hear the evidence, usually only that of the state, and determine whether or not there is reasonable cause to believe that a crime has been committed, and that the accused committed it. If such cause is shown the accused is confined or released on bond if the offense is a bailable one, to answer any charge which may be lodged against him by the prosecutor or grand jury. If no charge is filed before the first day of the next regular term of the circuit or other court having jurisdiction, he is entitled to be released if in confinement, or to be discharged on his bond if at liberty on bail.[4]

When the defendant is charged by indictment of the grand jury there is no preliminary hearing and the indictment is filed direct in the trial court.

When the charge is filed against the defendant in the circuit or other court having trial jurisdiction he is arraigned and confined awaiting trial unless the offense is bailable and the defendant can give bond. In homicide cases there is a coroner's inquest and verdict by his jury, but such verdict is only advisory so far as further prosecution is concerned and is nothing more than an additional preliminary hearing with just about as much effect.

After the defendant is arraigned in the trial court his case is set for trial. No written answer to the charge is required. However, under the practice, motions or other proceedings attacking the jurisdiction of the court or the sufficiency of the charge are in writing.

The prosecutor may dismiss the charge and the defendant will be discharged. If grounds for change of venue or disqualification of the judge exist, the necessary affidavits are filed and the case sent to another county or to another judge. If the defendant has no counsel to represent him and is unable to pay counsel fees, the court will appoint a member of the bar to conduct his defense.[1] Such counsel must serve without pay as an officer of the court. There is no other provision for a "public defender" in our laws.

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[1] R. S. Mo. 1919, Sec. 3848, Amended Laws 1925, p. 195.

[2] See page 540.

[3] For more detailed discussion of this subject see "Preparation and Presentation of the State's Case," p. 121.

[4] R. S. Mo. 1919, Sec. 3848, Amended Laws 1925, p. 195.

All felony cases must be tried by jury. The parties cannot waive a jury and try the case to the court even by consent.[2]

The jury is selected from the county where the defendant is tried. The state has no right to a change of venue. Unless the defendant asks for a change of venue the case is tried in the county where the crime was committed. The trial is conducted for the state by the public prosecutor designated as the prosecuting attorney.[3]

THE COURT'S LIMITATIONS IN CRIMINAL CAUSES

The proceedings in the court before trial consist largely of motions, demurrers and the like directed to clarify the issues and fixing the time for trial. The average person is wont to regard the court as the place where all questions arising in the course of the administration of justice are presented and decided; that failures of justice mean the failures of the court. Nothing could be farther from the facts. The arresting officers, the prosecutor and the pardon and parole authorities are independent of the courts. It must be borne in mind that the trial courts are bound to follow the practice and procedure prescribed by the general assembly and the Supreme Court.

The survey has disclosed that the vast majority of decisions in the course of administering the criminal laws in Missouri are made by the arresting and prosecuting officials, and that only a very negligible number of cases ever reach the stage where the decisions of the trial courts are of any importance. For example, out of 7,032 felony prosecutions started in the whole state during the period of the survey,[4] only 848 actually went to trial in the circuit court, 323 of which resulted in acquittal, 442 found guilty as charged, and 83 found guilty of a lesser offense; 251 of these cases were disposed of by action of the circuit court on rulings on motions, demurrers, etc.[5] The other cases were disposed of before trial largely as the result of action by the prosecutor.

Data collected in St. Louis and Kansas City demonstrate very clearly that a very much larger number of cases are disposed of by decisions of the arresting officials and that an overwhelming majority of persons committing felonies in these cities are never apprehended at all.[1]

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[1] R. S. Mo. 1919, Sec. 3957.

[2] Constitution of Missouri, Art. 2, Sec. 22. See State vs. Mansfield, 41 Mo. 470; State vs. Sanders, 243 S. W. 771 Mo. Sup.

[3] In the City of St. Louis the public prosecutor having charge of felony prosecutions is designated circuit attorney.

[4] This is the number of such cases recorded in the 38 counties and cities surveyed.

[5] See table, p. 167 for detail of such dispositions.

The principal functions of the trial courts in the process of administering justice are:

1. Determining questions of bail;
2. Passing upon motions before and after trial;
3. Bringing the cause to a trial;
4. Hearings on applications for change of venue;
5. Presiding at the trial;
    a. Excusing jurors;
    b. Selecting a jury to try cause;
    c. Passing upon objections during trial;
    d. Determining sufficiency of state's evidence;
    e. Instructing the jury;
    f. Discharging jury—mistrial;
    g. Fixing punishment on plea of guilty and when jury unable to agree on punishment;
    h. Assigning counsel to impecunious defendants;
6. Hearings on applications for judicial paroles.

The exercise of these functions with respect to bail bonds is covered by the report on bail bonds.

PROCEEDINGS PRIOR TO TRIAL

Motions.

It is the duty of the trial court to hear and determine motions and demurrers filed by counsel prior to trial. Such pleas are for the most part filed by counsel for the defendant and are leveled at the jurisdiction of the court, the sufficiency of the charge, or the failure of the state to comply with the many statutory requirements or to follow the last ruling decisions of the Supreme Court on matters of pleading, practice and procedure. Dilatory motions filed for the purpose of procuring delay are a common occurrence. Some discretion rests with the trial courts in such matters, but the decisions are generally controlled by the mandate of the statute or the last rulings of the Supreme Court. Much depends upon the prosecutor, for if the indictment or information has not been properly prepared or if the statute and Supreme Court rulings have not been adhered to with respect to any phase of the prosecution, the court has no option but to sustain the motion or demurrer as the case may be. There was no effort made in the survey to determine the number or character of such rulings by the trial courts except where the same resulted in ending the prosecution. Out of 4,969 cases which ran the gauntlet of preliminary procedure, and were lodged in the circuit court, only 251 were terminated by action of the court, and a large majority of such dispositions were of such a nature that the responsibility is with the prosecutor rather than the judge as is indicated by the following table:

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[1] See tables, pp. 543-545.

Detail of "Disposed of on Action of Court"

	St. Louis City	Jackson County	Buchanan County	Total 3 Urban Centers	Total 36 Counties	Total for State
Dismissed by consent					2	2
Dismissed on payment costs	5		6	11	84	95
Dismissed on motion of defendant					6	6
Dismissed on peremptory instructions of court	2	1		3	7	10
Dismissed on plea in abatement					6	6
Discharged		3		3	3	6
Discharged on demurrer to evidence	8	2		10	8	18
Discharged on motion to quash		1	1	2	16	18
Continued generally	22		10	32	49	81
Retrial ordered		2		2	7	9
Totals	37	9	17	63	188	251

Compared with other causes of release short of punishment, this does not indicate any undue leniency by the courts in this phase of judicial administration.

Delays and Continuances.

Perhaps the greatest discretion the trial court exercises is with respect to continuances. Delays invariably follow continuances. In the strategy of the defense in nearly every criminal case delay is given a prominent place. It often means absence of witnesses, and in the case of repeated continuances, disgusted and angry witnesses for the state, the memory of the witnesses become dimmed, the prosecutor may be changed, he may lose interest as the case grows stale, and in many ways a decided advantage for the defendant in the average case may be had by the simple expedient of putting off the trial. In many instances the prosecutor is not only overworked, but underpaid. He often has too many cases set on approximately the same dates, and he is only too willing in any but cases of exceptional public interest to consent to a continuance. The court may require the case to be tried notwithstanding the agreement between the prosecuting attorney and the defendant's counsel, but it is not often done. In a Southeastern Missouri border county where the docket is exceedingly heavy, one circuit judge, a few years ago, adopted the policy of forcing counsel to trial regardless of agreements to continue the case. He cleared the criminal dockets which had for years been congested, but he incurred the hostility of every lawyer at his bar, and as a result he was defeated for re-election by a heavy majority.

The judge is usually willing to grant continuances when consented to by the prosecutor, because if he is not, the prosecutor may dismiss the case. To secure a dismissal is, of course, even more satisfactory to the defendant than delay.

A canvass of the trial judges of the state on this point resulted in the judges in 22 circuits stating that they usually, as of course, grant requests for continuances consented to by the prosecutor, and those in 16 circuits stating that while they considered in determining whether the defendant should be granted a continuance the fact that the prosecutor had consented to the action, they did not deem themselves bound by this consent.

The case material collected in the survey in the three large cities of St. Louis, Kansas City and St. Joseph, together with thirty-five of the larger counties of the state,[1] discloses some very interesting data bearing on the relation of continuances to delays in the various steps of prosecution from the date of arrest to the date of final disposition.[2] Two general classes of dispositions are considered: (1) in the court of preliminary hearing; (2) in the circuit court. It was necessary, of course, in order to find the average delay which follows each continuance in each part of the state where the cases were examined to find, first, the median of delay occurring where no continuance was had. The median interval of delay in cases disposed of in the preliminary hearing where no continuances were entered was found to be 12 days in St. Louis, 14 days in Kansas City and Jackson County, 17 days in St. Joseph and Buchanan County, 8 days in the group of counties having 60 to 70 percent urban population,[3] 6 days in the group having 50 to 60 percent urban population, 18 days in the group having 40 to 50 percent urban population, 7 days in the group having 30 to 40 percent urban population, 9 days in the group having 20 to 30 percent urban population, and 10 days in the group having 10 to 20 percent urban population. The increase in delays expressed in days for each continuance is noted in the table referred to. These figures tend to show that in the court of preliminary hearing the ratio of increased delay for each continuance is much greater in the cities than in the country districts.

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[1] One at least in each judicial circuit.

[2] See Table XVI, p. 329.

[3] The case material collected during the survey was tabulated in groups of counties arranged according to the percentage of urban population in such counties.

It is fair to assume that there is a definite relation between this fact and the fact that a very much larger number of cases are disposed of finally without further prosecution in the courts of preliminary hearing in the cities and urban districts than in the country districts. The percentage of cases dying in the preliminary hearing stage in the cities is 41.73 percent of the total prosecutions started, whereas in the country districts but 10.67 percent of total prosecutions end there.[1] Delays due to continuances in the preliminary hearing tend to increase the chances for no further prosecution.

In the circuit court the order is reversed. Continuances in that court in the country districts result in greater delay than in the cities. Reference to Table XVIII on page 337 will disclose in graphic manner the relation of continuances to delays in the circuit court in the time intervals of (a) date of arrest to date of indictment or information; (b) date of indictment or information to date set for trial; (c) date set for trial to date of final disposition and (d) the total time intervals from date of arrest to final disposition in the circuit court in the various cities and groups of counties classified as to percentage of urban population. The last of these intervals, *i.e.* the total time elapsing in cases going to final disposition in the circuit court is of special interest as showing the complete picture. The figures for the interval last referred to appear on page 170. That the nolle pros. or termination by dismissal by the prosecutor follows the greatest average number of continuances in cases in the circuit court in both cities and country districts is clearly demonstrated by the tabulation of results of the survey shown in Table XVII, page 334. There it is shown that the nolle pros. is used after the extreme number of continuances have been granted and a larger average number of continuances in every one of the cities and in a majority of the groups of rural counties. This type of disposition following continuances exceeds any other, in most of the units considered. It is greater in number, even, than in the cases where the defendant was tried and acquitted in a number of localities.

The fact is significant that this table shows that the smallest percentage of average number of continuances in practically every jurisdiction is followed by sentence in the circuit court although that action represents the final judgment of the court and would ordinarily be regarded as coming at the end of all proceedings and therefore subject to the maximum delay in the course of prosecution. The explanation is found in the fact that of all punished 82.08% are punished on pleas of guilty.[2] Pleas in Missouri are taken and allowed

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[1] See Table IB, p. 276.

[2] See page 122, "Preparation and Presentation of the State's Case."

INTERVAL D. CIRCUIT COURT

St. Louis City			Jackson County			Buchanan County		
Number of Cases	Number of Continuances	Median Interval	Number of Cases	Number of Continuances	Median Interval	Number of Cases	Number of Continuances	Median Interval
721	0	53	423	0	31	82	0	64
128	1	142	94	1	61	9	1	235
38	2	192	45	2	101	12	2	277
13	3	235	35	3	123	6	3	392
9	4	325	21	4	159	5	4	197
2	5	144	5	5	167			
1	6	103	13	6	178			
			5	7	298			
			9	8	321			
			5	9	307			
			2	11	281			
60.0–69.9			50.0–59.9			40.0–49.9		
302	0	72	241	0	67	56	0	39
39	1	197	45	1	105	20	1	132
14	2	215	12	2	130	17	2	206
5	3	353	5	3	204	5	3	306
2	4	73	5	4	275	4	4	145
2	5	387	1	5	353	2	5	365
30.0–39.9			20.0–29.9			10.0–19.9		
598	0	46	224	0	60	369	0	75
96	1	180	34	1	171	74	1	204
52	2	248	14	2	391	48	2	249
29	3	318	2	3	408	9	3	152
17	4	349	2	4	607	11	4	167
8	5	277				1	5	227
5	6	338						
32	7	352						
3	8	414						
1	13	776						
0.0–9.9								
100	0	65						
20	1	168						
5	2	333						
2	3	446						
1	4	494						

quickly after the charge is lodged in the circuit court. As a rule there are neither continuances nor delays preceding a plea of guilty.

What each continuance means in the way of delay is graphically portrayed in Table XIX, page 343, where the average number of days added by each continuance in each of the cities and groups of counties is shown. One continuance in the proceedings before the court of preliminary hearing results in an average delay of 12.5 days. In the circuit court the shortest interval of time resulting from a continuance is naturally between date of arrest and filing of the charge in that court in which only the cases charged by indictment are considered. However as the intervals lengthen the effect of one continuance to delay final disposition becomes more serious. In the interval between date of indictment or information and the date set for trial one continuance means an average delay in the whole state of 16 days. In the interval from the date set for trial to date of final disposition one continuance results in the whole state in an average delay of 41.8 days; in the interval from date of arrest to date of final disposition in the circuit court in those cases which survived to reach that stage the average delay which one continuance causes is 79.8 days. A noticeably longer delay occurs as the result of each continuance in the circuit court in the rural sections as compared with the cities, which is explained by the fact that nearly all of the rural counties are grouped into circuits with ambulatory courts sitting sometimes only twice a year in each county of the circuit. A continuance of a case in one of these counties means the trial is postponed until the next term, which may be six months or even longer from the date of the continuance. In the cities and more populous urban communities the courts are in practically continuous session and a continuance may mean the postponement of the trial no longer than a week.[1] The importance of getting a criminal case ready for prompt trial is graphically depicted by these figures of the survey. The record in Missouri of such a surprisingly small number of cases going to trial as compared with the number of prosecutions initiated, is explained by the fact that the record shows that practically every case entering the courts for prosecution, except those in which guilty pleas are entered, is continued more than one time.

As has already been indicated the individual responsibility for delays caused by continuances must be largely assumed by the prosecuting attorneys, for while the court may be able substantially to lessen the number of continuances by insisting upon cases being tried when they are set, yet the court has no control over the preparation by the prosecutor and is powerless to require the case to be tried if the state is not ready. The alternative of dismissing the case for failure to prosecute, except after a sufficient number of continuances to indicate that there was no prospect of the state ever being ready for trial, might result in releasing many guilty offenders. Personal observation of the trial courts at work in all parts of the state, during the time the survey was going on, demonstrated that the circuit judges are impatient of continuances, and especially in the rural sections, where a continuance means either a long delay or an abandonment of the prosecution altogether, the judges appear to be constantly contending with the bar against continuances and delays of all kinds in their efforts to keep up with their respective dockets. So far as it has been observed in the places where the survey was made, the most important matter before the trial courts, the thing which has seemed to be uppermost in the minds of the trial judges, is getting the docket clear at each term of court. This attitude keeps the business of the courts moving, but will not, alone, prevent continuances and delays. The prosecutor, by getting ready for trial, places the court in a position to insist upon a trial, but if the prosecutor is not ready, the court as a rule is powerless to proceed.

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[1] The record taken during the survey rated every postponement a continuance, although technically speaking a case which is merely passed either by consent, on motion of court or lack of time to try, to be reset during the same term may not be considered a continuance.

CHANGE OF VENUE

Changes of venue are practically unknown in the cities of St. Louis, Kansas City and St. Joseph. In these cities and in all counties having 75,000 inhabitants and over the application for a change of venue must be supported by evidence of the causes set up in the application. In counties of less than 75,000 inhabitants which includes practically every county in the state except those containing large cities, the court must grant the application if the same is supported by the affidavits of five citizens of the county.[1]

It is not difficult for any citizen of the county to get such support for his application. It is quite often important for the defendant that he be not tried by his neighbors of the county. Moreover, if the defendant does not want an early trial (and he seldom does) the change of venue is the most certain known method of getting a continuance. Then there is the very decided advantage of requiring the witnesses for the state to travel to a distant county to testify at the trial and if, perchance, after such change and the case is called for trial in the county to which it is sent, some grounds for a further continuance may be found and the witnesses excused to appear again at some future time, after having been in attendance, away from home, on their own expense for two or three days or longer, it is, naturally, difficult to secure their attendance at the subsequent hearing.

In one Southeast Missouri border county during the survey there were 450 criminal cases on the docket for the next term of court. The circuit consisted of this and another county where the criminal docket was heavy. The prosecuting attorney had no assistants. He stated that it was the practice of lawyers representing the defendants to make no agreements for continuances of any of these cases in advance of the session of the circuit court in that county, although it was impossible for all of the cases to be tried at one term. Therefore it was necessary for the prosecutor to subpoena his witnesses and be prepared for trial in every case. In many instances cases had to be continued for lack of time to try and when at a subsequent session some of the cases which had been continued from one term to another were reached for trial, the defendant would apply for a change of venue and the process would start anew. The witnesses for the state, dragged about through successive continuances and from one county to another became disgusted and hostile to the prosecution. These conditions have resulted in practically a complete demoralization of the administration of the criminal laws in that jurisdiction.

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[1] Laws Mo. 1921, p. 206.

While this is an extreme instance of the baneful effects of this law, it invariably operates as a strong weapon for the defense and a never-failing agency for the delays and absence of witnesses which so often mean defeat of justice. The judges were asked the following question: "What is the principal reason or reasons for continuance of criminal cases in your circuit?" and of the answers received to this question the judges in 32 circuits gave the absence of witnesses as the principal reason for continuances. Other reasons given were: "Inability and failure of counsel to prepare," "illness of defendant," "agreement of counsel," "desire for delay obtained by threat of change of venue," "desire for delay and congestion of dockets," "prosecution not ready," "lack of time to try," and "defendant sparring for time." The statute being mandatory in character, the circuit judges are powerless to deny the application even though it may appear perfectly obvious that it is made solely for the purpose of securing delay.[1] The prosecuting attorneys in the counties where this law applies are clamorous for its repeal, stating that it is a serious obstacle to prosecution and the most prolific source of unreasonable delay. The judges are almost a unit for the repeal of the law, only two in the entire state being recorded against its repeal.

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[1] This law was prepared and introduced in the General Assembly by a representative of one of the northern tier of counties to enable him to secure a change of venue for one of his clients charged with turkey stealing. He had the case continued in the court where the charge was filed, on the ground that he was a member of the General Assembly, and when the session adjourned after the passage of this law he returned and filed his application signed by five witnesses, friends of the defendant, and the court was forced to grant the change without any evidence to support it. Upon trial in an adjoining county the defendant was convicted and is now serving a term in the penitentiary.

One judge, speaking from a long experience on the bench in a country circuit, says:

> "The principal reason for continuances is delay. This is true in nine times out of ten. Delay means scattered witnesses, loss of interest by state's witnesses and often opportunity for improper influences to be exercised upon them, sometimes change of prosecutors and many other things which handicap the prosecution. . . . This probably is true only in the country circuits, but in those composed of two or more counties the abuse of the change of venue statutes simply forestalls prompt criminal procedure."

Another says: "The change of venue law is a disgrace to the state." It seems the practically unanimous opinion of those charged with the duty of administering the laws in counties where this law applies that it should be repealed, and we so recommend.

Presiding at the Trial

The trial of a felony criminal case is a serious proceeding. The liberty, and oftentimes the life, of the person on trial is at stake. While it has been said that the function of the judge of the court presiding at the trial is practically that of moderator or referee; that by reason of circumscribing statutes and rulings of the Supreme Court he is deprived of much of the power which he ought to have in directing the course of the trial, yet there are many things which may be done by him to insure a fair, speedy and impartial trial to the state as well as to the defendant. The trial courts are as different in the way they are conducted as there are differences in the men who preside over them. A judge who is dignified and stern, yet courteous and fair in his demeanor; who will require attorneys to conduct themselves with respect to the court, to opposing counsel and to the witnesses; cannot but impress upon the jury the fact that they are engaged in a serious business and that the enforcement of the law is a matter of serious concern to all. On the other hand, a judge who is inclined to joke with attorneys, to indulge in facetious remarks, to permit disorder among the spectators, wrangling between counsel, and who exhibits indecision in his rulings, fails to inspire in the jurors, witnesses and counsel, a feeling that they are engaged in a solemn proceeding.

The duties of the trial judge with respect to excusing jurors and selecting a jury to try the cause are elsewhere referred to.[1]

Determining Sufficiency of State's Evidence.

Considerable discretion is permitted the judge in admitting and excluding testimony of the witnesses, but this is controlled to a very considerable extent by the rulings of the Supreme Court and statutory provisions. When the state has presented its evidence, the trial judge has the power of determining the sufficiency thereof, which is a most important one. If the court shall determine that the state has not made a prima facie case the defendant is discharged and under the rule of "former jeopardy" cannot again be tried on the same charge. This power is seldom exercised as is evidenced by the table on page 159 indicating that out of the total number of 4,969 felony cases in the circuit courts, during the period of the survey, only 18 were dismissed owing to failure of the state to make out a prima facie case.

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[1] Page 178.

Instructing the Jury.

The most important duty which the court has is that of instructing the jury on the law of the case. The nature of these instructions, the duty of the trial judges with respect thereto, and what the instructions shall cover, have been the subject of much concern by the Supreme Court and by the Legislature. The statute provides that "whether requested or not the court must instruct the jury in writing upon all questions of law arising in the case which are necessary for their information in giving their verdict, which instructions shall include, whenever necessary, the subjects of good character and reasonable doubt; and a failure so to instruct in cases of felony shall be good cause, when the defendant is found guilty, for setting aside the verdict of the jury and granting a new trial."[1] This statute has given the courts a great deal of trouble and has been the subject of much judicial comment and discussion among judges and lawyers all over the state for many years. In order to ascertain the view of the trial judges, who are in daily contact with the problem of instructing the jury on all phases of a felony prosecution encompassed in the indictment or information and the evidence at the trial, with respect to a suggested amendment to this law providing in effect that the court should be required to instruct the jury in writing on any point of law arising in the case only when requested to do so by counsel for defendant, 35 judges in 23 judicial circuits favored the amendment, 5 judges in as many judicial circuits opposed the amendment, 2 of the judges in 2 judicial circuits qualified an affirmative answer by suggesting a still more drastic amendment to the present law.

The statute further provides[2] that the court "shall not on the trial of the issue in any criminal case sum up or comment on the evidence and charge the jury as to matter of fact unless requested to do so by the prosecuting attorney and the defendant or his counsel, but the court may instruct the jury in writing on any point of law arising in the cause." The prosecuting attorneys were first asked if they would favor giving the trial judge in the state courts the same power to sum up the evidence and orally charge the jury at the conclusion of the case as is provided under the English system and that the Federal judges now have and exercise. They favored following the English and Federal practice by 50 yeas and 28 nays. The circuit judges of the state were then asked if they would repeal this section altogether. The judges in 15 circuits replied in the affirmative, in 9 circuits in the negative, and the remainder either refused to answer the question at all or were undecided how to answer it. No question of judicial procedure has been so widely discussed by members of the judiciary, the bar, and by the lay public in recent years as has this one. Certain notable trials in the Federal courts have led to spirited attacks upon the Federal system of giving the judge presiding at the trial real power over the case by permitting him to comment upon the evidence in an oral charge, and to some extent express an opinion as to the weight and sufficiency thereof for the benefit of the jury. Realizing the importance of the question, and there having been some considerable division of opinion between the judges as well as the prosecutors concerning the advisability of giving this great power into the hands of the judges in the state courts, a further questionnaire was submitted to all of the circuit judges of the state in which they were asked this specific question: "In your judgment would the administration of criminal justice be promoted if the trial judge had the same powers to sum up the evidence and orally charge the jury at the conclusion of the case that the Federal judges now have?" Out of 67 judges to whom the question was propounded, 37 of them replied categorically in the affirmative; 23 in the negative. Some of the comments of the judges are illuminating. One who favors the greater power says:

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[1] R. S. Mo. 1919, Sec. 4025.

[2] R. S. Mo. 1919, Sec. 4038.

> "This would be a great time saver provided only vital errors in instructions were considered grounds for reversals. Otherwise useless."

Three judges voted against the enlarged power, and in explanation of their views said:

> "Power is too greatly abused now by Federal judges. Dangerous to lodge too much power in judge's hand. Instructions should be written. Court should have power orally to sum up evidence at course of trial and court should fix punishment, but would prefer trying fewer and simpler instructions."

Two judges added an opinion that the court should fix the punishment to their affirmative answer to the specific question. One judge, while voting in the affirmative, adds:

> "Doubt advisability. Every expression I have heard from members of the bar has been against such a change."

Other comments by those opposed to the change are:

> "Could only be determined by trial, an experiment which I do not favor."
>
> "Not as long as judges are elected by primary, paid meager salaries, etc."
>
> "It is a dangerous power. Under such circumstances jury would be as useless as it is in the Federal courts."
>
> "Some circuit judges talk too much now. Circuit judge does not command enough respect to avoid charge of prejudice if he charges orally."
>
> "Would not promote administration of justice materially."
>
> "Would increase efficiency of my court by 100%."
>
> "Am in favor of the change, but it would arouse an avalanche of opposition."

To the members of the St. Louis Bar Association was recently referred a similar question which arose on resolution to test the sentiment upon a bill which had recently been introduced in Congress prohibiting the presiding judge in the trial court from expressing an opinion as to the credibility of witnesses or the weight of the testimony involved in the issue. This referendum resulted in a vote of 219 to 117 against the resolution.

The Committee on Jurisprudence and Law Enforcement of the American Bar Association filed a report at the annual meeting in Detroit in 1925 on the same bill, in which the conclusion was reached:

> "We regard the principle of the bili as a serious menace to the usefulness of jury trials as a feature of our judicial system."

In a brief filed with the report it was stated that the constitutional provision of right of trial by jury means the particular kind of trial by jury authorized by the common law when our Federal Constitution was adopted; that a trial from which the important right of the court to express his opinion as to the credibility of witnesses and the weight of the testimony is lacking would not be a jury trial as that term was intended by the framers of our Constitution. Thus it will be seen that there is a decided trend among the judiciary, prosecuting officials and members of the bar, in the direction of lodging more power in the court in directing the trial of a person accused of crime.

JURIES[1]

More important, almost, than the position of the trial judges is that of the jury in criminal cases, for if a jury finds a verdict of "acquittal," that is final, though it be the result of ignorance, misconduct or even corruption, and, of course, the verdict is final where it results from errors on the part of the judge, even though seemingly inexcusable. The importance, then, of having juries composed of men of high character, must be manifest.

Has the judge then, any power to raise the standard of the juries which are to try the cases in his court?

The constitution of this state and the statutes contain provisions with relation to juries: Article 2, Section 22 of the Constitution of 1875 guarantees the defendant "a speedy public trial by an impartial jury of the County," and Section 28 provides "that right of trial by jury as heretofore enjoyed shall remain inviolate; but a jury for the trial of criminal or civil cases in courts not of record, may consist of less than twelve men as may be prescribed by law.—Hereafter a grand jury shall consist of twelve men, any nine of whom concurring may find an indictment or true bill."

There are several sections of the statute referring to the qualifications of jurors, the manner in which jury lists are to be made up, and jurors drawn and summoned for service. R. S. 1919, Section 6607, reads:

> "Every juror, grand or petit, shall be a male citizen of the State, resident of the County, sober and intelligent, of good reputation, over twenty-one years of age, and otherwise qualified."

R. S. 1919, Section 6609, exempts certain citizens from service on juries: Members of the fire department or employees of certain governmental departments, as well as persons exercising the functions of clergymen, doctors of medicine, attorneys, etc. It is curious that the chapter on juries consists of six articles: Article 1 being of general application; Article 2 applying to Counties having 60,000 and not more than 200,000 inhabitants; Article 3 applying to Counties containing 200,000 and not more than 400,000 inhabitants; Article 4 applying to cities with over 100,000 inhabitants; Article 5 applying to Counties having 60,000 and not more than 200,000 inhabitants and adjoining a city having 400,000 inhabitants or more; Article 6 applying to cities containing over 500,000 inhabitants. Curiously enough, in several of these articles, there are provisions with reference to the qualification of the jurors, and these are not always identical with each other. However, in general, they contain substantially the same provisions.

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[1] The following discussion on juries is the work of J. Hugo Grimm.

The last mentioned article, which at present applies only to the City of St. Louis, provides[1] for a board of jury supervisors with a chief clerk and other deputies, and that the board of jury supervisors shall, between May 1st and September 1st of the year 1919, and during the same period of every second year thereafter, cause a canvass to be made of all who are subject to jury service in said City. Section 9 provides, "that every male citizen of this State, resident in said City, sober and intelligent, of good reputation, over twenty-one years of age, not exempt from jury duty shall be deemed qualified to serve as a juror." After this canvass is made, a list of all the jurors is prepared and the names of all qualified jurors are then written, each on a slip of paper and placed in a large wheel from which they are drawn as the courts make their order for jurors. In other words, if a judge orders fifty jurors for a certain week, the clerk of his court sends a copy of the order to the jury clerk who then draws the number of names from the wheel called for by the order. A list of these names with addresses is made out and furnished the sheriff who then endeavors to serve the men so designated.

A judge ordering a number of jurors will invariably find that a certain percentage have not been served, due to various causes; such as absence from the city, death, or the inability of the sheriff to find him at his home or place of business. In ordering juries, the courts, of course, make allowance for these failures to get service. However, the court has a right to excuse those who have been summoned and theoretically this is only done where they have good excuses to offer. In practice this is not always true. Unfortunately, judges are nominated through the influence of political organizations which also assist in their election, and the members of these organizations and some public officials do not hesitate to use their influence to have competent and well-qualified citizens who have been summoned to serve as jurors excused from that service.

It is fair to assume that those who seek to be excused are men of affairs and large interests on the one hand, or working men who cannot afford to serve for the small allowance of $1.50 per day, the allowance in the City of St. Louis. The former, of course, are more influential, and acquainted with those having political influence so that the majority of those who are excused, as a matter of favor, belong to the former class.

This has a tendency, at least, to lower the standard of the jury. From time to time campaigns are started to induce business men not to attempt to evade jury service. Something may be accomplished in this manner, but it would seem that a more direct method would be to impress upon the judges their responsibility in the matter, and their duty to refuse to excuse capable and representative citizens from jury duty except where they are able to present valid excuses.

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[1] See Laws of Missouri 1919, page 420, et seq.

There is also the danger of deputy sheriffs making false returns of "not found" in cases where they have in reality found and served jurors, and this has occurred usually in cases where the jurors were to be summoned to serve for judges known to be strict in requiring good excuses before relieving the juror from duty.

In connection with jury service, there is the question of the legal capacity of women to serve as jurors in the State of Missouri. The language of Article 2, Section 22, of the Constitution already quoted, seems clearly enough to exclude women from jury service, and R. S. 1919, Section 6607, expressly restricts jurors to male citizens. To enable women to become jurors it will become necessary not only to amend the statutes, but also the Constitution of the state. Whether this should be done is, of course, a political question, but it may not be out of place here to call attention to the fact that where women are qualified to serve as jurors, experience seems to have shown that they make at least as good jurors as men, and it is unreasonable to suppose that the mere question of sex could really have any influence upon the qualifications of the person to render efficient service as a juror. Experience seems to have shown just what one might expect, namely, that among women, just as among men, there are some who make very good jurors and others poor jurors. It is not a question of sex, but one of intelligence and character, and it is more than likely that the women required to serve on juries will compare favorably in both respects with the men called upon to render like service.

No doubt, the courts would be much more liberal in excusing women from jury service than men, and this for the very good reason that the duties of a mother and wife may make her presence at home during a part, at least, of court hours indispensable.

There are some practical conditions that must be met where women and men serve together on juries, such as providing separate quarters where it is necessary to keep the jury together over night, but these difficulties seem to have been successfully met without great cost or effort.

In felony cases, unless counsel agree, the jurors must be kept together until discharged by the court. Of course, they are placed in charge of officers of the court (deputy sheriffs) whose duty it is to see that no outside influence reaches them and that they are guilty of no conduct that would necessitate the granting of a new trial in case of conviction. All that a judge can do is to instruct the officials in charge of the jury as to its custody and its privileges. The jurors must be taken to their meals, often some distance from the court house, and where a trial is protracted over a long period of time, must be given some opportunities for exercise and even recreation. To prevent all contact with the outer world is impossible, but the judge can at least insist upon having deputy sheriffs who are faithful and conscientious and who may be depended upon to prevent any improper communication by outsiders with the jurors, which might in any wise influence them in finding a verdict.

TRIALS WITHOUT A JURY

We have heretofore mentioned that delays in bringing criminal cases to trial almost invariably redound to the advantage of the defendant, and that therefore it is of the first importance that these cases be brought to trial and disposed of speedily. We have also mentioned that postponements and continuances can in a large measure be avoided by adequate preparation on the part of the state and by the trial judges insisting upon prompt trials. The necessity for speedy trials in the efficient administration of justice has, in Maryland, led to a system of trials without a jury if requested by the defendant. In criminal cases in that state a defendant in a felony case is permitted, in effect, to plead not guilty and submit his case to trial by the court. It is very evident that a case can be tried by a judge in but a fraction of the time that would be required by a jury. It is interesting to note that in Maryland a very large percentage of felony cases are submitted to the court for trial, with the result that the judges are able to dispose of a much larger number of cases than is possible in jurisdictions where it is not permitted to waive a jury in such cases. Apparently this method of disposing of serious criminal offenses is resorted to in a surprisingly large proportion of the cases coming on for trial—probably in seventy percent of all felony cases—an eloquent testimonial to the confidence and esteem in which the courts of Maryland are held by the bar and the people.

In Missouri, there is a statute which permits the trial of misdemeanors by the courts without a jury, where the parties consent thereto.[1] And the courts have held that defendants charged with violations of municipal ordinances, which are quasi criminal proceedings, are not entitled to a trial by jury in the municipal courts.[2] However, on appeal to the circuit court it has been held that the defendant charged with violation of such ordinance is entitled to jury.

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[1] R. S. Mo. 1919, Sec. 4006.

[2] Delaney vs. Police Court, 167 Mo. 667.

The Supreme Court has since an early day held that the right of trial by jury in a felony case cannot be waived. State vs. Mansfield, 41 Mo. 170, it was held specifically that while the Legislature might provide for summary prosecutions of misdemeanors, yet under our constitutional guarantee of right of trial by jury, the defendant in a felony case cannot waive that right, the jury must consist of twelve men, and nothwithstanding the fact that the defendant had agreed to be tried by a jury of less than twelve men. And in a comparatively recent case[1] the Supreme Court held that the Constitution of Missouri not only required a trial by jury in all felony cases, and that such trial could not be waived by defendant, but also that an agreement by him through his counsel, to have the case tried by a jury of only eleven men, was void. It follows that, however desirable the Maryland plan of trying felony cases without a jury may be, under the Constitution of Missouri, as interpreted by the Supreme Court, the Legislature could not, if it so desired, provide for the trial of felony cases by the court without a jury, even with the consent or at the request of the accused.[2]

Discharging Jury—Mistrial.

The court must discharge the jury and order a re-trial when the jury are unable to agree. Occasionally this occurs but not often. Of the total trials had during the period of the survey only 5% resulted in mistrials.

Fixing Punishment on Plea of Guilty and When the Jury is Unable to Agree.

The present statute provides that when the jury agree upon a verdict of guilty, but cannot agree upon the punishment, or do not fix the punishment in their verdict, the court fixes the punishment; and when the jury finds a verdict of guilty and assesses a punishment not authorized by law, and in all cases of judgment by confession, or pleas of guilty, the court fixes the punishment. There is a decided prevailing sentiment among judges and prosecutors in the state that the question of the guilt or innocence of the defendant should be decided by the jurors and that the punishment should be fixed by the court in all felony cases. The reasons given for this are fairly uniform, but for the most part are based upon the well-known fact that jurors are much less capable than are the courts of assessing punishment that would fit the crime. At the present time it is almost universally the custom in this state to accept the recommendation of the prosecutor as to the punishment to be assessed upon a plea of guilty. The judges in 32 circuits answered in the affirmative the question "Do you require the prosecuting attorney to recommend punishment after plea of guilty," as against 8 in the negative, and the returns from a very large majority of the circuits show that such recommendation when made is as a rule accepted. Various reasons are assigned for this rule, not the least of which is the fact that the prosecuting attorney is, and the judge usually is not, in a position to investigate the facts from which to determine what the punishment should be. While the ultimate responsibility for the sentence is upon the court, the primary responsibility when a recommendation is made by him is upon the prosecuting attorney. The 16 judges in the City of St. Louis, all of whom rotate in service in the three criminal divisions of the court, all agree in answer to the question sent to them that recommendations as to punishment on plea of guilty are requested by the judges of the prosecuting officials, but say:

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[1] State vs. Sanders, 243 S. W. 771, decided in 1922.

[2] An interesting article on the Maryland practice of trying cases by judges alone, by the Honorable Carroll T. Bond, presiding judge of the Maryland Court of Appeals, appears in the November, 1925, number of the American Bar Association Journal.

> "Such recommendation is not necessarily accepted. The court must exercise its own judgment but the views of the circuit attorney are entitled to and receive consideration."

The circuit judges in St. Louis County always request the prosecuting attorney for a recommendation, and the same when made is seldom rejected. All of the judges in Kansas City require the prosecuting attorney to make a recommendation of punishment after plea of guilty, and a majority of them state that they usually, although not necessarily, accept the recommendation as made.

Judicial Paroles

The laws of Missouri provide[1] that all circuit and criminal courts in this state have authority to grant paroles "upon such condition and under such restrictions as the court or judge granting the paroles shall see fit to impose." In the larger cities and counties parole boards are established by law, of which the judges of the circuit court are members, with parole and probation officers working under separate laws in the various jurisdictions. Under these laws the trial judge may under certain conditions parole a person convicted of a felony in which event the person goes free subject to the supervision which may be imposed in the terms of parole without serving any sentence at all. The table on page 184 shows the number of judicial paroles granted during the period of the survey in the various jurisdictions classified according to offenses.

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[1] R. S. Mo. 1919, Secs. 4155-4167, inclusive.

	St. Louis City	Jackson County	Buchanan County	60.0–69.9	50.0–59.9	40.0–49.9	30.0–39.9	20.0–29.9	10.0–19.9	0.0–9.9	Totals
A. Murder, manslaughter, etc.							1		4	1	6
B. Rape							3		2	1	6
C. Assaults	3	2		2	1		9	2	1		20
D. Carry. con. weapons	4	15		1	2	1	11	4	6	2	46
E. Burglaries	7	6	2	5	3	4	17	5	8	4	61
F. Robberies	1	1			1		7	2		1	13
G. Larcenies	10	5	3	5	4	1	29	4	10	7	78
H. Embezzlements	1	1					1				3
I. Forgeries	2	5	2	13	3	4	20	5	10	1	65
K. Sodomy	1									1	2
L. Auto offenses	2		1	8	1		1		2		15
M. Mixed charges against property				1				1			2
N. Mixed charges against persons											
O. Mixed charges against property and persons											
R. All other charges	3			3		2	11	3	4	1	27
	34	35	8	38	15	12	110	26	47	19	344
J. Liquor laws			2	1			21	10	10	1	45
P. Mixed charges against liquor laws							2		2	1	5
Q. Mixed charges against person and liquor											
			2	1			23	10	12	2	50

Comparatively speaking, paroles in the larger cities are not often granted. In St. Louis, for instance, the practice of commuting penitentiary sentences to the Boonville Reformatory is much more extensive than paroling direct from the bench.[1] The table on page 185 indicates the type of sentence and final disposition of cases in which bench paroles were granted.

The problem of supervision of paroled persons is rather aggravated in the congested centers, but in the country districts is not difficult. Inquiry among the judges indicates that there is a very definite relation between bench paroles and pleas of guilty. In that connection some of the judges comment as follows:

> "As a general rule when plea is entered parole is asked."
> "Prosecutors with weak case ask for heavy sentence and parole."
> "All defendants apply for paroles."
> "Paroles and pleas go together as a matter of course."
> "Majority of those convicted on pleading guilty apply for parole."

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[1] See Chapter "Preparation and Presentation of the State's Case."

"If defendant pleads guilty to get a parole he doesn't get it. If from sense of guilt it helps him."

"Prosecuting attorney and defendant agree on plea and get parole. However submitted to the court."

"Many plead guilty hoping for parole."

"I never agree to a parole by plea."

"Parole law induces pleas on part of first offenders."

"Little relation between pleas and paroles."

"About 10% of pleas of guilty ask parole; was formerly 100% but is less now."

'I rarely grant paroles after tried by jury."

"Very close relation between pleas and paroles in my court."

"Many pleas are inspired by hope of getting parole."

"Most applicants for parole are those who plead guilty, such pleas frequently made for purpose of getting parole."

The judges in all but four of the districts see a very close relation between pleas of guilty and applications for judicial paroles. There

NATURE OF SENTENCES AND OUTCOME OF JUDICIAL PAROLES

Nature of Sentence:		
Jail	85	
Fined	24	
Fine and jail	34	
Workhouse	18	
Workhouse and fine	4	
Reformatory	25	
Ind. home	3	
Penitentiary	196	
Penitentiary and fine	2	
Jail and penitentiary	1	
No record	2	
	394	
Complied with Terms of Parole:		
Until discharged	104	
To date of survey	138	
No records in county	89	
	331	331
Paroles Revoked:		
Sentence executed	28	
Sentence not executed	27	
	55	55
Left state no action taken	1	
Convicted in another state	2	
Committed suicide	1	
Never reported, not revoked	1	
Reported once, not revoked	1	
Reported twice, not revoked	1	
Reported three times, not revoked	1	
	8	8
		394

is a marked tendency away from granting such paroles because of abuses especially in the larger cities. All of the judges claim that through the parole boards, the sheriffs and prosecuting attorneys, or by the judges themselves, they try to make a thorough investigation to determine whether or not the applicant has a previous criminal record and also make serious efforts at supervision after parole. The following observation by one of the judges is rather typical of a majority of them:

> "I cannot say I have entirely quit granting any paroles, but I grant them only in extreme cases of family need. I make it plain to parolees that they will have to superintend themselves or go to prison. I am not going to provide a guardian angel for them."

The consensus of opinion seems to be that the provisions for investigation and supervision of bench parolees in all but the large cities is adequate, and that no changes are necessary. It is simply a question of more employees and greater expense in the congested districts to provide adequate facilities for such investigation and supervision.

PART V

BAIL BONDS

By

RAYMOND MOLEY, Ph.D.
Department of Public Law, Columbia University
Research Director, New York State Crime Commission
Formerly Director of the Cleveland Foundation
and Secretary of the Cleveland Association for Criminal Justice

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BAIL BONDS

THE LEGAL BASIS OF BAIL

According to an outstanding authority on criminal procedure, admitting to bail consists in theory "in the delivery (or bailment) of a person to his sureties, on their giving security (he also entering into his own recognizance) for his appearance at the time and place of trial, there to surrender to take his trial. Meanwhile he is allowed to be at large, being supposed to remain in their friendly custody."[1] In determining the amount of bail the test usually followed is the probability of the accused appearing to take his trial, not necessarily the character or seriousness of the offense.[2] As to the sufficiency of sureties the judge is solely responsible. He may, however, orally examine the sureties under oath and compel them to submit affidavits of qualification.

While the word recognizance is generally used to cover the entire process of admitting to bail, there is a distinction between a bail bond and recognizance, the former being an instrument which is drawn up and signed and filed with the court. A recognizance, according to common usage, is an acknowledgment before a magistrate or judge, by a surety of responsibility, for producing a given defendant, and in this case the surety does not sign his obligation but appears before the court and replies to the magistrate's statement of his obligation. Such a recognizance then becomes a matter of record. It has all the characteristics of a contract.

Sureties are not compelled to remain upon bonds longer than they wish. They are, in law, the keepers of the accused. If they fear his escape or for any other reason want to be released, they may seize the accused and surrender him to the court, whereupon they are discharged from their obligations. If the condition of a bond or recognizance be broken, the bail is said to be forfeited and the sureties then become liable for the amount of the bond. The court may remit the forfeiture if good reason is given. In Missouri the governor may also remit the forfeiture.

The procedure in the case of a forfeited bond is through the issuing of a writ of scire facias by the court whereupon the suit to secure judgment becomes a civil case in which, in Missouri, the prosecutor must represent the state.

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[1] Harris' Criminal Law, 301.
[2] Wharton, Criminal Pleading and Practice.

In Missouri bail is a constitutional right. The constitution of the state provides that "all persons shall be bailable by sufficient sureties, except for capital offenses, when the proof is evident or the presumption great."[1] The Constitution also states that excessive bail shall not be required. In this respect Missouri stands with the majority of states, and, in seeking remedial legislation in connection with bail bonds, is unquestionably hampered as compared with the following-named nine states in which bail is not a constitutional right:

Alabama
New Hampshire
West Virginia
Georgia
New York
Maryland
North Carolina
Massachusetts
Virginia.

It is provided in the statutes of Missouri,[2] that when any sheriff or other officer shall arrest a person by virtue of a warrant upon an indictment or shall have the person in custody under a warrant of commitment "and the amount of the bail required is specified on the warrant, or if the case is a misdemeanor" such officer may take bail. It is provided in such cases that bail shall not be less than $100.00. It should be noted, in this connection, that the sheriff has no authority whatever to fix bail in felony cases, and consequently, cannot accept bail unless the amount is specified on the warrant.

The statutes of Missouri further provide that sureties shall "be residents of this State, and shall be worth, over and above the amount exempt from execution, and the amount of their debts and liabilities, the sum in which bail is required." This would seem to include forfeited bonds under "debts and liabilities." In other words, it should be the duty of a judge, in accepting bail, to know the status of the property of the surety, and by all means, to know whether the surety has outstanding against him any forfeited bonds. The statute further provides "that the person or persons offered as sureties may be examined on oath in regard to their general qualifications as sureties and other proof may be taken in regard to the sufficiency of the same." This specifically gives the court the right to exact statements of qualification from sureties.[3]

There is a statute applying to the City of St. Louis[4] providing more extensive and stringent regulation for the acceptance of bonds by police officers. This statute provides that certain police officers in charge of station houses may accept bonds in bailable cases. These police officers are authorized, under the statute, to refuse to receive as sureties "any and all parties with unsavory reputations or who, as professional bondsmen, tend to defeat the ends of justice. And no one shall be accepted as bondsman who shall have standing against him an unsatisfied judgment rendered on a forfeited bond." This statute further provides that such police officers may, prior to the hearing before the examining magistrate, "refuse to admit to the presence of arrested persons, all persons having the reputation of grafters and shysters, or those attorneys who are guilty of the practice of soliciting business." The intent of this law is evidently to give to the police of the City of St. Louis the power to control the professional bondsman evil and also the evil of the soliciting criminal lawyer.

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[1] Constitution Mo., Art. 2, Sec. 24.
[2] R. S. Mo. 1919, Sec. 3919.
[3] R. S. Mo. 1919, Sec. 3920.
[4] R. S. Mo. 1919, Sec. 8963.

THE PARAMOUNT RESPONSIBILITY OF THE COURTS

In the discussion which follows concerning bail bonds and their administration, one cardinal fact should be kept in mind. The acceptance of bail within certain constitutional limitations is a matter over which the judge of the court has complete control. If the judge is sensitive to his duty in this respect and demands high qualifications for sureties the bail bond evil is reduced to a minimum. If, on the other hand, he is not scrupulously careful in his acceptance of bail, there will grow up in the courts a most distressing bail bond problem with the attendant perversion of justice which, unfortunately, is all too common in certain courts of this state, particularly in the large cities. It is true, of course, as we indicate elsewhere in this report, that the judge has no ready access to information which will guide him in the acceptance of bonds.

It should also be noted that wide variation exists among judges in the acceptance of certain bondsmen. Our records indicate, for example, that a widely known professional bondsman in St. Louis was not accepted by several of the judges, and that a large proportion of his bonds are accepted by one judge. This is an unfortunate indication that a judge was altogether too lax in the acceptance of this bondsman inasmuch as he was generally known to be a bad risk.

THE ADMINISTRATION OF BAIL IN ST. LOUIS

In St. Louis, bondsmen, before they are accepted, must file a qualification statement on a form provided for that purpose. This qualification form is supposed to be sworn to and filed in the office of the circuit clerk. The qualification form in use at present embodies the following list of questions:

Where do you reside?
Are you married or single?
Do you own any real estate?
Where is it located? Street, number.
State the dimensions of the real estate you own.
Is it improved or unimproved?
Describe the kind of improvements.
In whose name is the title to the above described property?
When did you acquire it, from whom, and what was the consideration?
Since acquiring the above described real estate have you executed a deed conveying the property to any other person, said deed not having been delivered at this time?
Is your deed to the above described property recorded in the Recorder's Office of the City of St. Louis?
At how much was it assessed at the last assessment?
Is there any incumbrance, mortgage or deed of trust upon said property, and what is the amount thereof?
Has any person, other than yourself, any interest direct or indirect, in the above described property?
Do you live on said property?
Are there any judgments against you, if so, what?
Are you now surety upon any bonds; if so, what bonds?
What is the value of your personal estate?
Where is it, and of what does it consist?
What are you worth above all your liabilities?
Have you ever been surety on any bond in a criminal case that has been forfeited and not satisfied?

There are two ways of compelling a bondsman to place in the record a description of the property which he offers as security. One is to file a qualification sheet, as is the practice in St. Louis, which is expected to cover bonds signed over a period of time. The other method is to require that a description of property and other essential facts be filed with every bond signed. The first method is satisfactory if the qualification record is very carefully scrutinized and kept up to date. This is not done in St. Louis, however. The qualification sheets are almost worthless from the standpoint of informing court officials as to the immediate present qualifications of sureties. There is no provision in the law or in practice to compel a bondsman to amend his qualification sheet when property is transferred or some other material change takes place. Consequently, the qualification sheet describes a condition which existed only at the time when the sheet was filed. In searching the records for qualification sheets of certain professional bondsmen in St. Louis, it was found that in many instances qualification sheets of men who were signing bonds very actively, were completely out of date. For example:

On September 1, 1925, qualification sheets on file for the five outstanding professional bondsmen in St. Louis, were dated as follows:

February 18, 1924,
December 12, 1924,
January 18, 1924,
January 9, 1925,
July 18, 1925.

It is significant to note that the bondsman who signed the largest aggregate of bonds in the City of St. Louis during the year which this survey covered, was the man whose qualification sheet dated earliest in the above group. That is, this man's bonds were accepted throughout the year studied—being accepted up to September 1, 1925—in spite of the fact that the court officially had no record of his property sufficiently up to date to justify accepting him at all.

Bail bonds in criminal cases may be accepted by the judges of the court of criminal correction, by judges of the circuit court, and in certain cases by the sheriff, by police officers, and by the circuit clerks. There is no definite routine followed in determining what person is to accept bail bonds in felony cases. Judges of the court of criminal correction, or of the circuit court often permit themselves to be routed out of bed to accept bail and thus release from jail persons charged with serious crimes. In thus performing this act they must make their decision without access to court records, and without adequate knowledge of the nature of the crime or of the prior record of the defendant.

After the bonds are accepted they are filed with the circuit clerk. There is no central place for the recording of bonds so that any attempt to determine the total amount of bonds which an individual has signed, must be attended with great labor. In other words, if it is desired to determine the character and amount of bonds which have been signed by a given surety, it will be necessary to search the files of the circuit clerk, the files of the clerk of the Court of Criminal Corrections, the sheriff's office and the police department. The process is attended by so much difficulty that bondsmen may operate with perfect assurance that no one will ever know the total amount of their obligations.

Cash bonds are seldom accepted. The clerk of the Court of Criminal Corrections states that he has had only one cash bond in ten years. In this instance there seemed to be a great deal of apprehension as to what should be done with the cash deposited, and it was distinctly the feeling of the clerks of the courts that they did not want such security. This is, of course, unfortunate because much is to be said in favor of cash bonds in all misdemeanor cases, a practice which is followed in some cities with a reasonable amount of success.

In the courts of St. Louis a large number of different kinds of bail bonds are used. They include the following:

> There are two forms of "common law bonds" in the Court of Criminal Correction, one in use in Division 1 and the other in Division 2.
>
> There is a "common law bond" used in the Circuit Court.
>
> There is the "Grand Jury" bond usually accepted by a judge of the Court of Criminal Correction. It is suffered to be used to hold the person bound over to the Grand Jury until he has been indicted (or no billed) and a capias has been served and the defendant arraigned.
>
> An "Indictment" bond is accepted by the Circuit Court after indictment, and
>
> An "Information" bond is accepted by the Circuit Court in cases initiated by information which binds the accused to appear for arraignment.
>
> There is a "Stay of Execution" bond which may be given after sentence. This bond is used in both the Court of Criminal Correction and in the Circuit Court.
>
> There is the "Motion" bond used when the cause is pending for a new trial.
>
> There is an "Appeal" bond binding the defendant to appear to receive judgment on his appeal. It is accepted by the Circuit Court.
>
> There is also a "St. Louis Court of Appeals" bond used in cases appealed from the Court of Criminal Correction.
>
> There is a bond for cases where the St. Louis Court of Criminal Correction has allowed an appeal to the Appellate Court.
>
> There is also a sheriff's bond used in misdemeanors and an appearance bond used in the Court of Criminal Correction.

Bail Bond Administration in Kansas City

In the circuit court in Kansas City, in felony cases, recognizances are the rule rather than the filing of bail bonds. As has already been noted in this report, a recognizance, strictly speaking, is a pledge made by a surety in open court which becomes a part of the court record. The prosecutor of Jackson County has established, since the beginning of his term in January, 1925, an interesting administrative system of controlling bail bonds. He has in his office, under the direction of one of his assistants, a centralized record of all bonds and recognizances. This system was copied from that used by the State's Attorney in Chicago which we shall subsequently describe. It means in substance that with the co-operation of judges, sureties are compelled to appear before the assistant prosecuting attorney in charge of bail bonds, and submit to him for his records certain information. If the surety is accepted by the judge his application is entered in a ledger under his own name so that this ledger, when properly maintained, yields at a glance the status of a bondsman. The difficulty, of course, in operating such a system in Kansas City or any other city, is the fact that such a record includes only bonds filed in the circuit court, and a professional bondsman may have scores of bonds in lower courts or in the Federal Court. There has been an attempt made in Kansas City to develop a co-operative system between the county prosecutor and the city comptroller, who is the custodian of bonds for the police and justices of the peace. This system provides that when a bondsman, because of forfeiture or because of some other irregularity, becomes objectionable, he is placed on what is known as a blacklist and this blacklist is kept by both the comptroller and the prosecutor. The question in Kansas City is whether this system will ever be properly kept up. The pressure of work is so great in the prosecutor's office that there is already evidence that it will fall into disuse and thus fail to effect the purpose for which it was established.

In the justice of the peace courts in Jackson County, bonds are accepted by the justices and the qualifications of the bondsman are filed with the bond. Prior to the administration of the present county prosecutor of Jackson County, justices of the peace were not required to file with the county prosecutor a statement of the bond and the qualification thereon, but at the present time the system which has been established in the county prosecutor's office requires this. Only one bond is filed in a case while the case is in the justice court, and this bond remains in effect until the case is bound over to the grand jury. In case of a forfeiture in the justice court the bond is sent to the criminal division of the circuit court where the usual procedure is followed to obtain judgment.

In the police courts, of which there are two in Kansas City, bonds are all secured by cash deposited when the bond is given. The amount of the bond and the name of the defendant and surety appear on the police court records. The police do not allow known professional bondsmen to operate in the police courts. It is said, however, that this precaution is avoided by the use of "runners" who are used by professional bondsmen to put up cash and sign for the receipt. When the case is disposed of the receipt is endorsed by the clerk of the police court and the surety can claim his money. If a fine is imposed or costs taxed against the defendant, the clerk endorses on the receipt the amount necessary to cover the fine and costs and this is withheld from the amount deposited. If the defendant forfeits his bond the clerk receives the money for the bond and the same is deposited in the city treasury.

Defects in Bail Bond Administration

The trouble with the administration of the bail bond system may be summed up as follows:

1. There are too many places where bail bonds in felony cases are accepted. This survey is not concerned with misdemeanors except in so far as they affect the administration of justice in felony cases. One of these exceptions is the problem of the bondsman who is offering bonds in misdemeanor cases as well as in felonies. Except in the maintenance of the blacklist in Kansas City, described above, there seems to be no co-operation between officials in the lower courts, in police departments, in sheriffs' offices and in the various offices of the circuit court to centralize information concerning bondsmen. It is a farce, of course, to accept bonds in the circuit court, signed by sureties who have already pledged their property in a lower court in other cases. It is useless to centralize information in the circuit court when such information does not include the number and amount of bonds signed by the same bondsman in the lower courts.

2. In St. Louis there seems to be no one who feels responsible for compelling bondsmen to keep their qualification sheets up to date. There is, of course, nothing to prevent a bondsman from disposing of the property which he describes in his qualification sheet immediately after it is filed, and as we have shown previously, bondsmen are often permitted to operate with the same qualification sheet over a period of years. Filing of the qualification sheet means nothing.

3. There is no prompt and vigorous follow-up in St. Louis or Kansas City on the forfeited bonds. Here again we see an illustration of scattered responsibility. The circuit judge completes his participation in a forfeiture case when he declares the bond forfeited. The clerk then issues a scire facias and feels that his job is done—as it is under the present law. The circuit attorney or prosecutor tries the case before the court and if judgment is secured, he disappears from the picture. The board of education is, according to the circuit attorney of St. Louis, responsible for seeing that collections are made but it obviously does not try to assume this responsibility. It is easy to see that with all these participants in the process of collecting a forfeited bond that there will be numerous "twilight zones" of responsibility.

The statistical records of felonies made by the survey, it will be recalled, cover the year from October 1, 1923, to October 1, 1924, in St. Louis City, Jackson County and Buchanan County, and the years from October 1, 1922, to October 1, 1924, in the other counties studied. Included in the record taken by the survey of these cases are all the facts concerning bail bonds in all of these cases. Most of the tables in this report are derived from them. Table I indicates the total number and amount of bail bonds and recognizances given in the counties studied. Counties are grouped for convenience in the order used elsewhere in this survey to show counties according to their percentage of urban population. The first outstanding fact shown is the wide difference among the counties in the percentage of bonds forfeited. In this respect St. Louis County enjoys an unenviable distinction. Omitting counties where the number of bonds given was too small to yield a reliable percentage, Greene and Jackson rank next and St. Louis City is well up in the list. It will be noted that only a very small percentage of forfeitures are ever reduced to judgment, about nine percent for the entire state, while the amount collected was only about six percent of the amount reduced to judgment. It is the latter percentage that yields the most deplorable conclusion because while it is to be expected that many forfeitures will be set aside for good and sufficient reasons, there is no good reason why only six percent of judgments are collected. The reducing of a bond to judgment means that all hope that the thing for which the bond was given will be fulfilled is gone, that the surety has failed in his obligation to the state and that he is indebted to the state for the amount of his bond. But the farce of the whole bail bond "obligation" is revealed in the fact that in the entire state only $1,572.80 was collected out of $25,900 reduced to judgment—a paltry six percent of a clear-cut obligation to the state. It should be noted moreover that in the two large cities of the state not a cent was realized. This showing is due to a variety of circumstances that will appear in the body of this report, chief among which are loose and careless acceptance of worthless sureties by judges, inadequate legal protection of the public interest in the property of the surety, and insufficient energy by prosecutors and sheriffs in pressing forfeitures to judgment and collection.

THE USE OF FORFEITURES TO GAIN TIME FOR DEFENDANT

Under the present custom in St. Louis, when a bond is forfeited the judge orders a scire facias to issue, which calls upon the surety to present himself during the next term of court to show cause why

TABLE IA

Bail Forfeitures in Missouri

Percent Urban	County	Number of Bonds		
		Number Given	Number Forfeited	Percent Forfeited
100.00	St. Louis City	1193	45	3.77
91.4	Jackson	911	37	4.06
83.2	Buchanan	82	2	2.45
	Totals	2186	84	3.84
60–69.9	Marion	150	1	.66
	Jasper	186	1	.53
	Totals	336	2	.59
50–59.9	Cole	30	1	3.33
	Greene	225	9	4.00
	Pettis	108	2	1.85
	Totals	363	12	3.30
40–49.9	Randolph	98	0	
	Linn	62	2	3.22
	Totals	160	2	1.25
30–39.9	Adair	57	2	3.51
	Grundy	28	0	
	Clay	39	0	
	St. Louis	208	51	24.52
	Saline	48	0	
	Jefferson	20	0	
	Cape Girardeau	77	2	2.59
	Butler	42	0	
	Boone	125	0	
	St. Charles	24	0	
	Livingston	55	1	1.82
	Totals	723	56	7.74
20–29.9	Audrain	22	1	4.54
	Vernon	24	0	
	St. Francois	151	3	1.98
	Henry	45	1	2.22
	Cooper	26	0	
	Totals	268	5	1.86
10–19.9	Macon	61	1	1.64
	Nodaway	39	0	
	Johnson	38	1	2.63
	Howell	70	0	
	Dunklin	307	8	2.60
	Newton	79	3	3.79
	Franklin	23	0	
	Pemiscot	313	11	3.51
	Totals	930	24	2.58
0– 9.9	Holt	34	1	2.94
	Wright	35	0	
	Phelps	54	0	
	Douglas	59	0	
	Scotland	39	0	
	Totals	221	1	.45
	Grand Total	5187	186	3.58

TABLE 1B

Amount of Bonds			Reduced to Judgment		Collected	
Amount Given	Amount Forfeited	Percent Forfeited	Amount	Percent of Amount Forfeited	Amount	Percent of Amount Reduced to Judgment
2,390,800.00	49,200.00	2.05	7,500.00	15.24		
2,305,700.00	99,050.00	4.29	1,000.00	1.01		
100,000.00	2,000.00	2.00				
4,796,500.00	150,250.00	3.13	8,500.00	5.66		
95,000.00	500.00	.52				
236,400.00	300.00	.12				
331,400.00	800.00	.24				
31,000.00	300.00	.97	300.00	100.00		
456,000.00	11,250.00	2.46	1,500.00	13.33		
181,500.00	21,000.00	11.57				
668,500.00	32,550.00	4.87	1,800.00	5.53		
162,800.00						
61,500.00	2,000.00	3.25	1,000.00	50.00		
224,300.00	2,000.00	.89	1,000.00	50.00		
51,000.00	1,000.00	1.96				
55,000.00						
90,600.00						
435,800.00	88,500.00	20.30	9,500.00	10.73	60.00	.63
65,000.00						
22,900.00						
234,300.00	900.00	.38				
35,500.00						
165,800.00						
25,300.00						
84,700.00	500.00	.59				
1,265,900.00	90,900.00	7.18	9,500.00	10.45	60.00	.63
35,400.00	300.00	.84				
36,500.00						
172,800.00	2,200.00	1.27	1,000.00	45.45	500.00	50.00
35,000.00	500.00	1.73				
15,600.00						
295,300.00	3,000.00	1.01	1,000.00	33.33	500.00	50.00
70,400.00	500.00	.71				
31,200.00						
91,500.00	200.00	.22				
76,000.00						
376,500.00	5,500.00	1.46	1,500.00	27.27		
60,500.00	1,500.00	2.48	1,500.00	100.00	1,012.80	67.52
25,000.00						
302,000.00	4,700.00	1.55	1,100.00	23.40		
1,033,100.00	12,400.00	1.20	4,100.00	33.06	1,012.80	24.70
31,500.00	500.00	1.58				
78,500.00						
35,500.00						
42,700.00						
54,800.00						
243,000.00	500.00	.20				
8,858,000.00	292,400.00	3.30	20,590.00	8.85	1,572.80	6.07

judgment should not be rendered against him in the amount of the bond. The surety and the defendant have thus accomplished a delay of a whole term of court, and during the succeeding term the surety in many cases presents his defendant and the forfeiture is set aside. The defendant is then subject to trial, but he has accomplished his purpose in that the case is now several weeks or months behind its schedule with all of the attendant advantages which the defendant gains by delay. The state's witnesses are scattered, the ones who remain are less certain of their testimony, and public interest in the case has disappeared. The records indicate a tremendous proportion of nolle prosses in such cases, which means that the loose method of administering forfeitures is constantly being "worked" by bondsmen and defendants to defeat the purposes of justice.

Setting Aside Forfeitures

The statutes of Missouri provide that the "bail, at any time before final judgment against him on a forfeited recognizance may surrender his principal in open court or to the sheriff; and upon the payment of all costs occasioned by the forfeiture . . . may thereupon be discharged from any further liability on the recognizance." In practice this means that at any time before the final judgment is had the surety may escape any penalty for failing to live up to his obligation by the payment of a comparatively small sum, which, in practice, is something less than $10.00. The effect of this is to grant a substantial continuance to the accused of a number of weeks because judgment on the forfeited recognizance cannot be had prior to the subsequent term of court, and the surrender of the accused, some time before the court has ordered judgment, will revive the criminal case which has been temporarily suspended by the forfeiture. Thus the accused may use this means of extending his period of delay, and weaken the case against him by the mere payment of an insignificant amount for costs. The fact is, however, that the costs are not always paid when forfeitures are set aside. According to our study of cases, costs when forfeitures were set aside were paid by sureties in only 15% of the cases.

The Significance of "Easy" Forfeitures

Serious consequences do not follow the forfeiting of bail in this state. The amount lost in the counties studied was far more than the approximate $24,000 difference between collections and forfeitures reduced to judgment. It should be remembered that thousands more are lost because of the lack of vigorous prosecution of cases when forfeitures were not set aside because of the belated production of the defendant. Table II shows that of 73 forfeitures not set aside, the first step in collection, the issuing of the writ of scire facias, was not taken in 26, while a large part of the remainder languished between scire facias and the hearing on judgment. To the amount of money thus lost, which may be estimated at another $25,000, should be added recognizances in which forfeitures should never have been set aside. The records show for example that many forfeitures were not set aside for many months after the forfeitures were declared. One is justified in asking why these were not pushed to judgment and collection in the long period that thus elapsed. Surely such delay in producing a defendant should not be thus tolerated by courts sensitive to their power and dignity. In monetary terms then the state stands a heavy loss by present conditions resulting in failure to enforce bail bonds.

TABLE II

Present Status of Forfeitures Not Set Aside

Percent Urban	County	Number of Forfeitures Not Set Aside	No Record of Any Action After Forfeiture Declared	Scire Facias Issued	Case Dismissed	Forfeiture Order Appealed and Case Pending	Judgment Entered	Fire Facias Issued	Execution Had and Collected in Part	Remitted by Governor.
100.00	St. Louis City....	19		8	1	4		6		
91.4	Jackson.........	20	12	6			2			
60–69.9	Marion..........	1	1							
50–59.9	Cole............	1					1			
	Greene..........	2	1					1		
40–49.9	Linn............	1						1		
30–39.9	Adair...........	1		1						
	St. Louis........	12	9						2	1
	Cape Girardeau..	1	1							
20–29.9	Audrain.........	1		1						
	St. Francois.....	1							1	
10–19.9	Dunklin.........	3					3			
	Newton.........	3							3	
	Pemiscot........	6	1	2			3			
0– 9.9	Holt............	1	1							
		73	26	18	1	4	9	8	6	1

But there is another more serious side of this problem. The status of these forfeited bail bonds means that many who have probably committed serious crimes remain at large permanently, free to commit other crimes while the state stands so impotent that it cannot even collect the pledged bail. To illustrate what this means in terms of the serious crimes that remain unpunished, we have prepared Table III to show the felonies charged against defendants who according to court records are still at large after the forfeiture of bail. Eighty-five persons charged in many cases with crimes of violence are still at large although they were at one time in the custody of the state.

TABLE III

Classification of Charges Filed Against Defendants, Such Charges Not Being Disposed of Finally. (Cases Pending For Any Reason or Continued Generally)

Crime	Totals
Assault to kill	3
Felonious assault	3
Carrying concealed weapons	10
Exhibiting deadly weapon	1
Burglaries	1
Burglary and larceny	5
Attempted burglaries	2
Robberies	8
Perjury	1
Grand larceny	8
Larceny from person	1
Larceny from dwelling	1
Larceny of domestic fowls at night	1
Receiving stolen or embezzled goods	5
Embezzlement	3
Obtaining money or goods under false pretenses	5
Forgery	11
Cheats, frauds, bogus checks	2
Liquor laws	11
Miscellaneous offenses	2
Assault to kill and assault to rob	1
Total	85

The third evil in connection with this condition is the fact that the impunity with which bail is forfeited has a tremendous effect upon the speed with which felony cases are prosecuted. This can only in part and imperfectly be shown statistically. Table IV indicates the time in days which elapsed in certain counties between the date when forfeitures took place and the date when these forfeitures were set aside.

The small number of cases in most of the smaller counties makes the "average" and "median" time rather valueless statistically but certain facts are clear. In St. Louis County, St. Louis and in Jackson County, places where the problem of crime is very serious, those cases in which forfeitures were had and set aside enjoyed the advantage of many days and weeks delay over cases in which bail was not forfeited.

TABLE IV
DELAY CAUSED BY EFFECT OF FORFEITURES

% Urban	County	Number of Bonds Forfeited	Number of Forfeitures Set Aside	Elapsed Time in Days from Forfeiture to the Order to Set Aside		
				Arithmetic Average	Median Average	Extreme Number of Days
100.0	St. Louis City	45	26	48.5	13.0	245.0
91.4	Jackson	37	17	58.0	62.0	209.0
83.2	Buchanan	2	2	17.0	17.0	17.0
60–69.9	Marion	1	0			
	Jasper	1	1	115.0	115.0	115.0
50–59.9	Cole	1	0			
	Greene	9	7	26.0	1.0	84.0
	Pettis	2	2	12.5	12.5	24.0
40–49.9	Randolph	0	0			
	Linn	2	1	20.0	20.0	20.0
30–39.9	Adair	2	1	122.0	122.0	122.0
	Grundy	0	0			
	Clay	0	0			
	St. Louis	51	39	89.0	37.0	415.0
	Saline	0	0			
	Jefferson	0	0			
	Cape Girardeau	2	1	8.0	8.0	8.0
	Butler	0	0			
	Boone	0	0			
	St. Charles	0	0			
	Livingston	1	1	2.0	2.0	2.0
20–29.9	Audrain	1	0			
	Vernon	0	0			
	St. Francois	3	2	103.5	108.0	108.0
	Henry	1	1	66.0	66.0	66.0
	Cooper	0	0			
10–19.9	Macon	1	1	1.0	1.0	1.0
	Nodaway	0	0			
	Johnson	1	1	5.0	5.0	5.0
	Howell	0	0			
	Dunklin	8	5	87.0	31.0	208.0
	Newton	3	0			
	Franklin	0	0			
	Pemiscot	11	5	162.0	123.0	406.0
0– 9.9	Holt	1	0			
	Wright	0	0			
	Phelps	0	0			
	Douglas	0	0			
	Scotland	0	0			
	Total	186	113			

In other words, those defendants who did not fulfill their obligation to appear at the proper time before the court were rewarded.

In addition to this rather inadequate statistical presentation of the problem, it should be remembered that forfeitures set aside after only a day or two probably resulted in a distinct advantage to the defendant because the docket of a court cannot be adjusted to such contingencies and in many cases trials must go over some days, often until the next term of court. This kind of delay cannot be accurately measured but it is undoubtedly very important.

REMISSION BY THE GOVERNOR

The Governor of Missouri has the power, under the statutes, "to grant a remitter when it shall be made to appear to him that there is by such . . . forfeiture an injustice done or great hardship suffered by the defendant or defendants."[1] The statute further provides that such applications for relief to the governor "shall be in writing, signed by the party or parties seeking such remitter, and accompanied by a statement of the facts of the case, signed by the judge or circuit attorney of the county in which fine or forfeiture was entered, and a certificate of the clerk that all costs have been paid." It is provided that the governor shall endorse his decision on each case and that the same shall be filed in the office of the secretary of state.

The survey examined the records of the remission of forfeited bail bonds by the governor which are filed in the office of the secretary of state in accordance with the law quoted above. The following table indicates the forfeitures remitted by the governors from October, 1923, to May, 1926. It will be obvious that not a great number are involved, there having been but one remission since the inauguration of Governor Baker.

TABLE V

BOND FORFEITURES REMITTED BY GOVERNORS

	Amount of Bond	Amount Remitted
St. Louis City	1,000.00	1,000.00
St. Louis City	5,000.00	4,000.00
St. Louis City	2,000.00	1,900.00
St. Louis City	800.00	400.00
St. Louis City	5,000.00	2,500.00
St. Louis City	800.00	400.00
St. Louis City	800.00	400.00
St. Louis City	800.00	800.00
St. Louis City	2,500.00	1,250.00
St. Louis City	800.00	800.00
St. Louis City	800.00	800.00
St. Louis City	800.00	800.00
St. Louis City	800.00	800.00
St. Louis City	800.00	400.00
St. Louis City	500.00	500.00
St. Louis City	1,500.00	1,000.00
St. Louis City	3,000.00	3,000.00
Caldwell County	800.00	800.00
Linn County	3,000.00	3,000.00
Phelps County	1,000.00	1,000.00
Ray County	1,000.00	1,000.00
St. Louis County	3,500.00	3,500.00
	37,000.00	30,050.00

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[1] R. S. Mo. 1919, Sec. 4145.

The governor's record filed with the secretary of state does not always indicate the reasons for remissions, but occasionally it does, as is indicated in the following record of the last case in which a forfeited bail has been remitted.

Date.

To Secretary of State.
Sir:

Whereas on 27th day of February, 1922, in Circuit Court of St. Louis City, Missouri, judgment was rendered in favor of State of Missouri against ——— surety on a recognizance in sum $3,000.00 for appearance of ——— in said court in said City of St. Louis, Missouri, to answer charge of Grand Larceny and Receiving Stolen Property, and

Whereas, it appears from application of ——— for remission of said judgment, which application is accompanied by statement of circuit attorney and clerk of circuit court for criminal causes showing payment of all costs accrued in this behalf, and it further appearing that the above mentioned surety has spent more than $1,000.00 in a bona fide attempt to apprehend—and he was prevented from returning said defendant because of the fact that the authorities of Mexico at Mexico City refused to honor extradition papers, and it further appearing that it would work a great hardship upon said surety to be required to pay the full amount of said forfeited recognizance.

Now, Therefore, I, Sam A. Baker, Governor of the State of Missouri, by virtue of authority in me vested, do hereby remit the sum $3,000.00, the same being full amount of said forfeited recognizance to be paid by said surety and do release and discharge the said ——— from payment of said $3,000 under said bond and judgment forfeited.

Please issue accordingly.

(Signed)

In many cases, however, there is no way of determining from the record exactly what reasons the governor had for the remission of a forfeited bail, the only reason appearing on the record being: "it further appearing that the payment of the full amount of said recognizance would work a great hardship upon the said ———." It would be extremely desirable to have records with more complete reasons given by governors in exercising their power in this important matter, and Governor Baker's example, as indicated above, would be an excellent one to follow.

THE PROFESSIONAL BONDSMAN

Wherever the bail bond problem has become acute much has been said concerning the "professional bondsman." As commonly understood the "professional" bondsman is one who accepts compensation in the form of a fee for acting as surety on a bond in a criminal case. The professional bondsman flourishes in every large city. He is often associated with criminal lawyers, sharing office space with them and acting as bondsman in cases in which they represent the defense. They frequently actively solicit business, "hanging around" police stations and criminal court rooms, accosting those arrested or their friends.

There is nothing inherently wrong in the business of a professional bondsman. The original theory of a bail bond was that it was given by a person of substance who knew the defendant and was willing to help him by signing his bond and thus to become sponsor for his appearance in the regular course of his trial. Such a theory can still operate in a rural community where the judge has ready access to the affairs of persons of substance and who personally knows them. Moreover, the entire community measurably shares the surety's sponsorship because the fact that a given person is accused of a crime and is released on bail is known and his whereabouts are not difficult to determine. In urban communities many of the defendants who are arrested for crimes are strangers in the city and, of course, know no persons of substance who are willing to act as surety for them. In these cases, oftentimes involving persons who are innocent of the crime charged, there is no way for them to secure temporary release from imprisonment except through the employment of a professional bondsman, who, on account of the fact that he is taking a risk for a person who is not well known to him, should, perhaps, be entitled to some compensation. It is this need that makes the professional bondsman an important factor in the process of criminal justice.

THE EXTENT OF PROFESSIONAL BAIL BOND BUSINESS

The survey in collecting information concerning bail distinguished between bonds signed by well-known professional bondsmen and others, and in St. Louis the proportion of bonds signed in the year studied, by professional bondsmen, was about 33%. In Kansas City the record is not so clear because there is no way of determining how large a proportion of bonds are signed in the police court. The proportion is probably about the same as St. Louis, although in the following table on account of the fact that all bonds in the Kansas City police court are classed as "others," the proportion of professional bond business looks smaller. The following table covers bail bonds of all classes signed in the year from October 1, 1923, to October 1, 1924.

TABLE VI

Total Bail Bonds—All Classes

	St. Louis	Kansas City
By well-known professionals	$3,389,114.00	$981,200.00[1]
By all others	6,665,487.00	6,591,672.00
Total	$10,054,601.00	$7,572,872.00

Six Objections to Professional Bondsmen

We have already said that there should be no quarrel with the professional bondsman *per se* because he is probably necessary in large urban communities. However, certain objectionable features seem to develop in connection with his operations and these have made it appear to many that the only relief from the bail bond situation is the entire elimination of the professional bondsman. These objectionable features are six in number:

1. The character of the bondsman himself.
2. The close relations between the bondsman and the underworld.
3. The excessive fees charged by the professional bondsman.
4. The evasion of responsibility by bondsmen.
5. Pledging of bondsmen's property beyond reasonable limits.
6. The development of improper relations between professional bondsmen and public officials.

In certain of these objectionable features the professional bondsman of St. Louis does not seem to have been guilty beyond the non-professional bondsman. In others, however, it is perfectly clear that he constitutes a serious problem. We shall discuss each of these points in order.

Character of Professional Bondsmen.

In every city where the professional bondsman operates there is no question but that oftentimes he is a person who should not be accepted by the court as the custodian of a person accused of crime. The survey attempted to determine the character of a number of the more important professional bondsmen in St. Louis through an examination of the police records of each of six familiar characters. Giving these persons letters instead of names because we are not seeking in this survey to fasten personal responsibility their records are as follows:

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[1] This does not include any bonds accepted in police court. It is in the main only those bonds accepted in the circuit court in felony cases.

	Charge	Disposition
Bondsman A. No police record		
Bondsman B. Police record	Violation of auto law	$5.00 fine.
	Violation of bone dry law	Released.
	Bribery	Nolle pros.
	Careless driving	Dismissed.
Bondsman C. Police record	Susp. affray	Discharged on bond.
	Disturbing peace	$5.00 fine.
	Disturbing peace	$5.00 fine.
	Susp. larceny from interstate shipment	No record.
	Discharging firearms	Discharged.
	Careless driving	Dismissed.
Bondsman D. Police record	Violation of auto law	Nolle pros.
	Speeding	Discharged.
	Violation of auto law	$5.00 fine.
	Disturbing peace	Discharged.
	Susp. larceny	Released.
	Violation traffic ordinance	$5.00 fine.
	Violation auto law	$2.00 fine.
	No state license	Discharged.
	Disturbing peace	$10.00 fine.
	Violation of auto law	$25.00 fine.
	Disturbing peace	$10.00 fine.
	Violation of parking ordinance	$5.00 fine.

(It is interesting to note that the police record of this person indicates that twice in 1915 and once in 1918 he was arrested for not having lights on his car and in 1919 was arrested and fined for having glaring headlights.)

	Charge	Disposition
Bondsman E. Police record	Peddling without license	$10.00 fine.
	Susp. violation Harrison Drug Act	Released.
	Gambling	Discharged.
	Careless driving	$25.00 fine.
	Leaving scene of accident	Released.
	Assault to kill	Discharged on bond.
Bondsman F. Police record	Disturbing peace	Nolle pros.
	Careless driving	No record.
	Robbery	W. O.
	Robbery	W. O.
	Robbery	Released.
	Robbery	Released.
	Robbery	Released.

We intend subsequently to discuss further the character of some of these bondsmen and to indicate their constant operation as professional bondsmen in spite of a very questionable criminal record and also a series of forfeitures which should have barred them from the courts completely. The above criminal records, however, are collected to indicate the fact that certain professional bondsmen who have been operating in St. Louis are not strictly law-abiding citizens.

Relation of Bondsmen With Criminals.

It is perfectly clear that the easiest course for a professional bondsman is to become so completely associated with the underworld, which he serves, that his knowledge of the haunts of his clients, and of their previous records, will guide him in acting for them, and protect him from mistakes which might result in loss. It is also perfectly clear that his contact with conditions in the underworld often extends to an actual knowledge of criminal acts which a law-abiding person would immediately report to the authorities. He does not become an informer, however, because such conduct would immediately destroy his status in the underworld, and take away his source of livelihood. His professional associations are often with the worst type of criminal lawyers and he, himself, in order to get business, becomes a hanger-on around the criminal courts and a solicitor of legal business for the lawyers whom he knows.

Excessive Fees.

No reliable statistics are available here but it is probably true that there is no definite rule which is followed by professional bondsmen in exacting fees. They usually take what they can get. In some cities they have been known to secure from the police authorities information concerning the amount of cash or other valuables taken from the prisoners upon arrest and have shaped their demands in accordance with this. It is not at all uncommon for a bondsman to exact twenty percent or more of the amount of the bond as a fee. Cases are known where such exactions have been made from relatives of the accused who could ill afford such an excessive charge. It is commonly believed that new crimes are committed to get money with which to pay the excessive fees of professional bondsmen.[1]

Evasion of Responsibility.

From a standpoint of public policy the primary consideration in determining the desirability of certain types of bondsmen is whether they fulfill their primary obligation as bondsmen. In other words, do they bring in their defendants for trial as frequently as non-professional bondsmen. Table VII indicates the status of cases in three large jurisdictions and indicates the reliability of professional and non-professional bondsmen.

TABLE VII

Comparison as to Forfeitures

	Total No. Bonds Signed by Professionals	Total No. of Bonds Forfeited on Professionals	Percent of Bonds Forfeited on Professionals	Total No. of Bonds Signed by Non-Professionals	Total No. of Bonds Forfeited on Non-Professionals	Percent of Bonds Forfeited on Non-Professionals
St. Louis City....	747	29	3.88	446	16	3.60
Jackson County..	257	9	3.50	654	28	4.28
St. Louis County.	48	20	41.66	125	31	24.00

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[1] See p. 212 for some discussion of profits.

The conclusion which we must reach from these figures is that the percentage of forfeited bonds signed by professionals is only a little higher than the percentage of forfeited bonds signed by non-professionals in St. Louis. In Jackson County the percentage of bonds forfeited which are signed by non-professionals exceeds the percentage of bonds forfeited which are signed by professional bondsmen. In St. Louis County, however, there is a very considerable difference between the two classes of bondsmen. In that county the percentage of total bonds forfeited by professional bondsmen was, in the period studied, almost twice the percentage forfeited by non-professionals.

TABLE VIII

COMPARISON AS TO FORFEITURES SET ASIDE

	Number Forfeitures Set Aside	Percent Signed by Professionals	Percent Signed by Non-Professionals
St. Louis City.....	26	61.54	38.46
Jackson County....	17	41.17	58.83
St. Louis County...	39	41.02	58.98

Table VIII indicates that in St. Louis City the professional bondsmen bring their defendants into court with a somewhat greater degree of regularity than non-professionals, although the reverse is true in Jackson County and St. Louis County.

This tabulation is somewhat reassuring because it is commonly thought that the professional bondsman is relatively less reliable than the non-professional bondsman.

Inadequate Security.

This problem discussed on pp. 213-214 and illustrated in the individual cases on p. 211 is practically limited to professional bondsmen. The bondsman who makes a percentage on every bond naturally wants to do as large a volume of business as he can on the smallest possible invested capital.

Professional Bondsmen and Public Officials.

Another danger often fostered by the presence of the wrong kind of professional bondsmen is the fact that there is likely to develop between these professionals and minor court officials a relationship that may come ultimately to most improper activities. Clerks and other attaches may solicit business for bondsmen, may "tip" off bondsmen as to the amount of valuables taken from a defendant and thus give an indication of what may be collected as a fee for signing the bond.

Perhaps it will throw into sharper relief the problem involved in the presence of professional bondsmen if we give in a bit more detail the extent of operations which certain St. Louis professional bondsmen have been permitted. We shall use the same letters to identify each that we used on page 208.

Bondsman C.

This bondsman well known to court officials has occasionally been out of favor with judges on the criminal bench and has therefore been reduced to a very limited business. The year studied by the survey, however, was one of his best. His last qualification sheet in the circuit court prior to our investigation on September 1, 1925, was February 2, 1924. He owned on September 1, 1925, real estate for which he claimed a valuation of $65,000, although its assessed valuation was only $30,000. He was delinquent in his taxes for two years. He had the police record described on page 208. He was on September 1, 1925, a surety on bonds in the Circuit Court to the amount of $70,500 and co-surety for $99,000 more. Thus his maximum liability was $169,500 in the Circuit Court alone. He had been in the habit of signing bonds in the Court of Criminal Correction and in the year October 1, 1923—October 1, 1924, signed a total of $108,030. So we may assume that he was responsible on September 1, 1925, for a comfortable fortune in misdemeanor cases. He also signed $11,500 worth of bonds in St. Louis County in the year covered by the survey. He forfeited a bond in December, 1924, but he was afterwards accepted in 1925. The outstanding facts in connection with this bondsman seem to be the tremendous amount of bonds in excess of even his claimed property, the fact that he was permitted to offer as a large part of his qualification personal property easily disposed of, the small number of qualification sheets filed, and his indebtedness for taxes.

Bondsman D.

This is perhaps the most serious case:

1. The circuit clerk's office on about September 1, 1925, stated that he had no qualification sheet filed in the circuit court. The only qualification sheets we were able to find were in the police department dated January 18, 1924, nearly twenty months prior to our investigation, and in the Court of Criminal Correction dated January 13, 1925.

2. His real property listed on the former was assessed at $18,000 and was mortgaged for $22,000, and on the latter real property

assessed at $24,100 mortgaged for $31,500. He claimed personal property to the value of $20,000, consisting of an interest in a commission business and "stocks and bonds." He was delinquent for $438.83 taxes. The Federal Government in addition had a large claim for delinquent income taxes pending against him which had not been reduced to a judgment.

3. His police record shows twelve arrests on minor charges.

4. Thirty thousand dollars in forfeitures were outstanding on September 1, 1925.

5. In spite of the foregoing facts he was on September 1, 1925, liable for $90,000 of bonds.

6. It should be noted that one circuit judge accepted $65,600 of the $90,000.

7. In the year covered by our investigation of misdemeanor bonds he signed $390,595 in bonds, and in the circuit court in the same year he signed $279,700.

8. Thus basing our estimate upon commonly known rates charged by bondsmen, this man whose real estate was valued at $24,100 with a mortgage of $31,500 was permitted to become surety in one year on bonds aggregating $670,295 and his compensation in all probability was not less than $33,000, and may have ranged as high as $100,000.

Bondsman E.

This man claimed on December 12, 1924, to own real estate the assessed value of which was $10,000. His business was that of a grocer for which he claimed a value of $8,000. His visible property was valued at $18,000, from which a mortgage of $5,000 should be deducted. He was thus worth about $13,000, including his business fixed at his own figures. On September 1, 1925, he was on $87,500 in bonds in the circuit court alone. On the basis of prior records he was probably on $5,000 in the court of criminal correction. That his character was not of the best is shown by the fact that his police record, readily accessible to court officials, was against him. In 1926 he was convicted of substituting a ringer for the principal in a bond forfeiture case in order to have the forfeiture set aside.

Bondsman F.

Late in 1924 he was adjudged an involuntary bankrupt. In January, 1925, the petition and schedule was filed showing no real estate, choses in action amounting to $1361.23 and personal property amounting to $3905.00. He had been an active bondsman in 1923 and 1924, our records for October, 1923-October, 1924 showing that he was accepted by the circuit court for $90,400, and by the court of criminal correction for $143,450, and in St. Louis County for $41,000. His latest qualification sheet filed early in 1924, while he was being accepted on large amounts of bonds, shows unencumbered real estate of an assessed value of only $2500, while a large claim is made for his interest in filling stations which did not appear in his subsequent bankruptcy proceedings. While his bankruptcy case was pending he was arrested for robbery in connection with one of the most serious crimes in recent years in St. Louis. The fact is to be noted that a judge of the circuit court in November, 1924, when two forfeitures of $1000 each were outstanding against him, when the only evidence of the ownership of real estate was a nine months old qualification sheet filed not in the circuit court but in the police department which claimed a $2500 unencumbered interest in a piece of property which he did not own in the month following, accepted him as surety on two bonds of $1000 each.

What Is Adequate Security?

The statutes are not clear as to the proper ratio to maintain between the value of the property owned and the total amount of bonds a given surety may be permitted to sign. As already stated, the law states that the surety shall be worth over and above the amount exempt from taxation and the amount of their "debts and liabilities" the sum in which bail is required. Is a bail bond a part of a surety's "debts and liabilities"? Or does it become a "debt" or "liability" only when forfeited? If a bail bond is evidence of "debt" or "liability" and there is good reason to believe that this is true, then it is clear that the meaning of the statute is that the total amount of bail bonds a surety may be accepted for shall not exceed the clear value of the property. Yet it is the custom in St. Louis to regard it as safe and permissible to allow the amount of a surety's bonds to equal twice the clear value of his property.

The argument to justify the large amount of bail in excess of even the claimed value of the surety's property is that it is perfectly safe, according to the law of probabilities, to let the amount of bonds exceed the value of property because it is not likely that more than a small proportion of the bonds will be forfeited. This is true if the bonds are large in number and of small denominations, but suppose as in the case of Bondsman E a bond is for $25,000 and it is forfeited as it was in his case.

If there is doubt as to the meaning of the law in this case the doubt should be cleared up by appropriate court action. The guesses of those who believe that the state is justified in taking the chance which is represented in accepting bonds aggregating two, three and four times the value of a surety's property should not be permitted to govern the situation. If the Legislature meant what the writer of this report is confident it did mean, then judges of the circuit court of St. Louis have not followed the law of the state.

The view is widely held throughout the United States that the amount of bail allowed a surety should not exceed in amount the value of his property. In fact, many believe it should not exceed fifty percent. This survey holds that not only does the state law require that property be not accepted for bonds beyond its value, but that the interests of the state clearly demand some margin between the two amounts.

The Prosecution of Forfeitures

A bond is declared forfeited when the defendant, who has been released from custody under the bond, fails to appear in court on the day of the trial. A capias warrant ordering the defendant's arrest on sight is then prepared and given to the sheriff. A writ of scire facias, outlining the circumstances of the forfeiture, is also prepared and presented in court by an assistant circuit attorney on the first day of the next term of court following the declaration of forfeiture. Unless the bondsman brings in the defendant before the hearing on the writ of scire facias, the forfeiture is ordered reduced to a judgment by the court. The judgment is then abstracted and filed with the circuit clerk as a lien against the bondsman's property, and an order for enforcement of the judgment is made to the sheriff. Within the last five years action has stopped there, except in those cases where bondsmen have voluntarily met their obligations.

The statutes are perfectly clear as to the responsibility for prosecuting forfeited bail. They state that: "The prosecuting attorneys shall . . . prosecute forfeited recognizances and actions for the recovery of debts, fines, penalties and forfeitures accruing to the state or county."[1]

The prosecutor should vigorously follow up all cases and actually assume responsibility for exercising all the power which he can summon to bring cases up to the stage of execution. Beyond that he has no legal power to compel the sheriff to act, except the power of persuasion, and if necessary, that of calling public attention to the inaction of the sheriff.

The basic difficulty is not solely that the circuit attorney and the sheriff are dilatory in performing their duties in connection with bond forfeitures although we do not mean to state that they have been energetic in protecting the interests of the state in this regard. It is the fact that under present conditions the surety can make it difficult if not impossible to collect from him on execution. The property accepted on the qualification sheet may be so encumbered that little will be left after execution to satisfy the amount due on the forfeited bond. It may be found that between the filing of a qualification and the forfeiture of a bond the property may be transferred. What is also possible is the acceptance of bonds from sureties whose major qualification was in terms of personal property which flows away long before action on a forfeiture begins. When "straw" bail is permitted so freely, it is of small avail to criticize the prosecutor's and sheriff's offices for failing to prosecute successful suits for recovery. Other cases where property can not be found by the sheriff, because it has been transferred after the bond is given and before the forfeiture takes place, can be prevented if there are provisions in the law either to make a bond a lien or to prevent the transfer of property while bonds are outstanding. Fundamentally the trouble is with worthless sureties, although vigorous activity and constant vigilance by the prosecutor is necessary to protect the interests of the state in all forfeitures.

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[1] R. S. Mo. 1919, Sec. 736.

THE BAIL BOND PROBLEM ELSEWHERE

There is no large city in the United States where the bail bond problem has not been troublesome. In the City of Chicago, for example, there are outstanding forfeitures to the amount of several million dollars in all the courts. This is in part due to the great size of the city and the number of criminal cases which are passing through the courts, but it is mostly due to ineffective laws and administration. In 1919 the Illinois Legislature repealed a statute making a bail bond a lien on the real property of the surety. This law, it is alleged, was repealed under the pressure of the real estate interests of the state. Since then no remedial legislation has been passed, although there have been several attempts made by persons in the City of Chicago to bring about the enactment of new legislation. The Chicago Crime Commission, in its desire measurably to abate some of the evils of the bail bond problem, brought about three or four years ago the establishment of a Bail Bond Bureau in the office of the state's attorney. This bureau is vested with the responsibility of investigating the sureties on bonds offered in felony cases in the criminal court. The procedure is as follows: When a bondsman desires to secure the release of a defendant, he goes to the bureau and offers certain information. He is then told that time must be given for investigation, and the bureau searches public records to determine the ownership and status of the property listed. Occasionally further investigation seems to be necessary and after the officials of the bureau are satisfied they endorse the bond, and it is then passed upon by the judges of the criminal court. The Chicago Crime Commission, a private organization, publishes bail bond reports every week for the benefit of judges of the court, and it also embodies its weekly reports in an annual report which is given to the public. In this annual report are listed all bonds which were accepted by the judges in cases where the bureau did not make an examination, or in cases in which the bureau ruled adversely and was overruled by the court. The whole purpose of the bureau has been to place upon the judge the responsibility of definitely overruling a recommendation in accepting a bond without its approval. This bureau, of course, exists only because the judges are willing to co-operate, and they actually have the legal power to make its efforts useless at any time, but at the present time they are very favorable to its work and only a few cases occur each year in which a judge takes responsibility upon himself for accepting a bail bond without the approval of the bureau.

The City of Cleveland, on account of its size and general problems, has many points of similarity with St. Louis. It has struggled with the problems involved in the presence of professional bondsmen for a great many years. It is curious to note that more progress has been made in the municipal court, which is the court of preliminary examination and of misdemeanor cases, than in the Common Pleas Court, which is the trial court. Six years ago the Bar Association drafted a bill providing for a bail bond commissioner for both courts and also embodied a provision making a bail bond a lien on the property listed. This bill was passed by the Legislature in 1921, but very soon after the Supreme Court declared it unconstitutional insofar as it applied to the Common Pleas Court. On account of this decision the bail bond is not a lien on property when it is accepted in the Common Pleas Court, but is a lien in misdemeanor cases. There has, therefore, been no relief in the bail bond problem in the Common Pleas Court, and at the present time a situation similar to that in St. Louis exists. There are thousands of dollars of forfeitures upon which action has not been had, and the county prosecutor whose duty is similar to that of the circuit attorney in St. Louis, has been very lax in pushing forfeiture cases through to judgment and collection.

In the City of New York there has been a very active campaign for the last year in connection with bail bond abuses. The problem there seems to be two-fold. First, the bulk of the bonding business is carried on by a number of surety corporations who employ large numbers of solicitors and "runners" who infest the courts and solicit business. It is commonly known that the fees charged by these corporations are excessive and that they on occasions accept questionable security for cash bonds given. The second serious problem in New York is the scattering of records of bail bonds throughout the city, there being no less than 110 places where bonds are accepted. The Legislature of 1926 passed several remedial laws, one of which provides for fingerprints on arrest and for the definite determination of a defendant's prior record before bond is accepted. This law also provides that in all felony cases and in seven specified misdemeanors, magistrates (judges of the lower courts) are not permitted to accept bail, but in these cases only judges of the Supreme Court and of the Court of General Sessions (the two important trial courts in felony cases) are required to accept bail.

In the City of Baltimore it is claimed by the Baltimore Criminal Justice Commission that the bail bond problem has been definitely reduced to some semblance of control by the establishment of a bail bond commissioner in the office of the clerk of the court. While no reliable statistics are at hand concerning the operation of this system, it is probable that Baltimore has as much control over the problem as any other city in the United States. It should be noted in this connection that bail is a lien on the property in the State of Maryland, and this provision probably means that bondsmen have more respect for their obligations than they do in states where bail is not a lien.

Recommendations

1. Amount of Property Required.

Revised statutes 1919, section 3920, should be amended, by inserting after the word "liability" in line four thereof the words "including the aggregate amount of outstanding bonds upon which he is surety."

2. The Prosecution of Forfeited Bond Cases.

The statutes of Missouri already specifically provide that the prosecuting attorney shall have the responsibility of proceeding in cases where bail bonds are forfeited to bring about the collection of the amount specified in the bond. Additional legislation should be provided to compel such action within sixty days of forfeiture. There should be legislative provision requiring the prosecuting or circuit attorney to publish and submit to each judge quarterly, a report indicating the status of uncollected forfeitures.

3. Fewer Bonds in Each Case.

There are now altogether too many bonds required at different stages of a felony case, especially in St. Louis. In certain counties this difficulty is eliminated by the more frequent use of recognizances of record. There should be but four bonds, one from arrest to appearance in the court of preliminary hearing, one at the end of the preliminary hearing, one from that point to conviction and one on appeal.

4. Bond After Conviction.

Some provision should be made restricting the release of convicted persons on bond pending appeal. We recommend the Federal practice.

5. Existing Laws Should be Enforced.

There are a number of changes in present practice some of which would require legislation which the author of this report might suggest as possible remedies for the conditions described in the foregoing pages. It is the opinion of the Survey Committee, however, that the Bail Bond problem in Missouri arises from the laxity of administration of existing laws, and that vigorous action by prosecuting and circuit attorneys and judges can reduce the bail bond evil to an inconsequential minimum.

PART VI

TEN YEARS OF SUPREME COURT DECISIONS

By

J. HUGO GRIMM, Ph.B., LL.B., LL.D.
Formerly Circuit Judge St. Louis

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TEN YEARS OF SUPREME COURT DECISIONS

(1915-1924 INCLUSIVE)

Statistical Conclusions

The purpose of this study of the decisions of the highest court of Missouri, in criminal cases, during the period from January 1, 1915, to December 31, 1924, was to secure definite information about the cases reaching that court—the number, character, and disposition of cases appealed to that tribunal, the grounds upon which the decisions were based, the extent to which constitutional or statutory provisions controlled those decisions on questions of criminal procedure, and the trend of judicial opinion with reference particularly to what are known as the technicalities of the procedural law.

During this period there were taken to the Supreme Court by way of appeal (or writ of error), a total of 1087 criminal cases; of these 342, or 31.46%, were dismissed on motion, because the appellant (defendant) had failed to take the steps necessary to perfect his appeal. Of the 745 cases remaining for the court to pass upon after submission, 420 were affirmed, 279 reversed and remanded, and 46 reversed outright, showing a proportion of slightly over 56.37% affirmances and 43.62% cases reversed or reversed and remanded.

No fair conclusion as to the significance of this seemingly large percentage of reversals can be formed without additional data. What proportion of the cases coming to the trial courts for judgment reach the Supreme Court? What is the character of the cases appealed? What legal questions have been involved, and what principles and rules have governed the court? To throw light upon these questions a number of tables have been prepared.

Table I shows the total number of cases appealed to the Supreme Court, during each year of this period, and also the number of cases affirmed, and reversed and remanded, and the number of cases reversed. It shows the figures and proportions just stated.

Table II contains a classification of the cases disposed of during this period, upon consideration of their merits, so classified as to show the number of the more important crimes involved. An examination of this table indicates that of the total number of 745 cases submitted, 193 involved murder in the first and second degree, being over twenty-five percent of the entire number and the same number of 193 cases involved serious charges of robbery (57 cases), rape and carnal knowledge (70 cases), and grand larceny (66 cases), so that slightly over one-half of all the cases, submitted upon their merits, involved these six important groups. Of these, murder in the first degree and rape may be punished by death, and murder in the second degree, and robbery in the first degree may be punished by imprisonment for life of the offender, while the other classes of offenses are punishable by varying terms in the penitentiary.

TABLE I

CASES AFFIRMED, REVERSED AND REMANDED, OR REVERSED BY SUPREME COURT OF MISSOURI, 1915 TO 1924 INCLUSIVE

Year	Affirmed	Rev. and Rem.	Reversed	Total
1915	54	26	7	87
1916	42	35	11	88
1917	28	26	1	55
1918	27	24	1	52
1919	37	18	1	56
1920	37	34	8	79
1921	42	19	2	63
1922	60	27	7	94
1923	48	34	1	83
1924	45	36	7	88
Totals	420	279	46	745

TABLE II

CASES BEFORE THE SUPREME COURT, 1915-1924. CLASSIFIED ACCORDING TO CHARGES

	Total Cases	Affirmed	Rev. and Rem.	Reversed
Murder 1st degree	121	69	50	2
Murder 2nd degree	72	47	24	1
Manslaughter	25	15	9	1
Arson	13	7	3	3
Assault to kill	26	17	9	
Burglary	28	12	14	2
Carnal knowledge	14	9	5	
Embezzlement	22	8	9	5
Fraudulent pretenses	29	13	13	3
Forgery	16	8	7	1
Grand larceny	66	39	21	6
Perjury	7	6	1	
Receiving stolen property	16	5	11	
Rape	56	29	25	2
Robbery	57	42	15	
Miscellaneous	177	94	63	20
Totals[1]	745	420	279	46

Calculations made from the figures in this table disclose the percentages of affirmances to be as follows: murder, first degree, 57%; murder, second degree, 65%; manslaughter, 60%; assault to kill, 65%; rape, 51%; robbery, 73%. These are all crimes of violence to the person. Against this, we find less than 50% of affirmances in the following groups: burglary, 43%; embezzlement, 36%; receiving stolen property, 31%; and fraudulent pretenses, 45%. The only offense against property in which the affirmances exceed the reversals is grand larceny, 59%. In perjury cases, the affirmances amounted to 85%, which is strikingly large and gratifying since that is one of the most serious offenses interfering with the administration of justice.

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[1] The case of in re Carey, 267 S. W. 806 (Dec. 30, 1924), should be added to the above table—it was a habeas corpus proceeding in which it was held that the statute referring to bail on appeal gave the defendant the absolute right to be at large on bail pending the appeal except where the sentence was death or imprisonment for life.

These figures are interesting, but do they warrant any definite conclusions? Why is the proportion of affirmances in cases of crimes against the person so much larger than in cases of crimes involving property? Is it because they are more dangerous to society—causing the court to take a sterner attitude with respect to them, or because the law is better understood because of their more frequent occurrence? Or is it due to a combination of these causes? We think that we may safely say that the law respecting embezzlement, fraudulent pretenses, and probably receiving stolen property, present decidedly more difficult questions than the law relating to robbery, rape and grand larceny.

Table III shows the number of cases reversed and remanded, or reversed, classified according to the nature of the error committed.

TABLE III

Principal Causes of Reversals of Cases by Supreme Court, 1915-1924

	Violation of Constitutional Provision	Defective Indictment or Information	Instructions Errors in Giving or Refusing	Evidence—Errors in Admission or Exclusion	Error in Extending Cross Ex. of Defendant beyond Direct	Variance	Allocution Omitted	Misconduct of Counsel	Misconduct of Court	Error in Form of Verdict	Evidence Insufficient to Sustain Verdict	
1915	2	2	8	9	3	1	1	1			8	
1916	1	6	11	9	3	1		3			13	
1917		3	11	2	2	2		2	1	1	3	
1918	1		8	7	1					1		
1919	1	3	4	4	1			1	1	1	2	
1920	2	4	14	7	1			2	1		9	
1921		1	11	3	1			1		1	2	
1922	1	1	15	3	2			1	2		8	
1923	2	7	14	13				5			5	
1924		1	20	7	2	2	3	1			9	
Total[1]	10	28	116	64	16	6	4	17	5	4	59	329

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[1] A number of cases transferred to the three Courts of Appeal are not included in this table nor in the table showing number of cases, affirmed, reversed, or reversed and remanded respectively. In two cases defendants had pleaded guilty under a misunderstanding and on appeal the judgments were set aside and the cases remanded. There was also an extradition case. The failure to include those cases will account for any apparent discrepancy in the figures appearing in these tables.

It is likely that in the above table a few cases may appear under two headings of ground of reversal where both points seemed of equal importance, and as a result the total cases in this table may exceed the total in Tables I and II by a few cases.

Much difficulty was experienced in preparing Table III, since it was by no means uncommon to find the court assigning several reasons for reversing or remanding a case. To avoid duplication, we endeavored to determine the main or most important ground, and made the classification according to that. There could well be some difference of opinion as to what is the main point or ground of reversal in a particular case, but taking the whole group, there would be a substantial agreement among those competent to judge.

It will be observed that only twenty-eight cases were reversed and remanded because of defective indictments or informations, while 116 cases were reversed and remanded because of errors in giving or refusing instructions; 64 because of errors in the admission or exclusion of evidence; in 59 cases, the evidence was held to be insufficient to sustain a conviction. In sixteen cases, improper cross-examination of defendant (going into matters which were not gone into in the direct examination) was the ground of reversal; while in seventeen cases, reversals resulted from improper conduct of prosecuting officers and five from improper conduct of the court.[1]

Table III also shows four cases reversed because the allocution was omitted; that is to say, the court failed to ask the defendant whether he had anything to say why judgment should not be pronounced against him. It ought to be added that in these four cases, the defendant was sentenced immediately after the return of the verdict and before he had a fair opportunity to present a motion for a new trial, so that the real ground for reversing the case was that the defendant had been deprived of the right to have his appeal heard on a proper record, since without having filed a motion for a new trial, the appellate court could consider only the record proper. In one of these cases, the court very correctly said that the defendant had been denied due process of law as guaranteed him by the Constitution.

Only six cases were reversed because of fatal variance, a small number indeed considering the total number of reversed cases.

We have pointed out that twenty-eight cases were reversed because of defective informations or indictments, but to present this feature fairly, it should be added that they were not reversed outright, but were reversed and remanded so that new informations or indictments might be drawn and presented, and also that during this same period the court sustained indictments and informations which had been attacked in several times as many cases. Then there were four reversals because of omission of the allocutions, and four because of error in the form of the verdict. In three of the latter cases the jury had returned a general verdict of guilty, where the indictment contained two or more counts charging different offenses, and failed to show the offense of which they found the defendant guilty.[1]

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[1] By improper conduct of prosecuting attorney or court is meant conduct legally improper, such as objectionable statements made during the trial, improper argument to the jury, in some cases abusive language or opprobrious epithets applied to the defendant in the argument, and there was one case where the prosecuting attorney persisted in asking highly improper questions, the objections to which the trial court sustained, the Supreme Court holding that such conduct had prejudiced the defendant; and as to the court, an examination by the court of a witness so conducted as to amount to a comment on his evidence, or some remark made by the judge in the course of the trial.

We shall in the pages immediately following consider a few of the groups of cases in which most of the reversals fall. These are (a) violations of constitutional provisions, (b) errors in instructions, (c) errors in admitting or excluding evidence, (d) defective indictments or informations. We shall consider a number of decisions in each of these groups seeking in our examination to discover tendencies in decisions which are significant in the problem of improving the administration of justice in criminal cases.

Violation of Constitutional Provisions

According to Table III only five cases were reversed because of some constitutional provision. There were, it is needless to say, very many more cases in which some constitutional question was unsuccessfully urged as a ground for reversal. The constitutional provisions having to do with the administration of criminal law are, with the exception of one provision, Article VI, Section 28, (which provides that all indictments shall conclude "against the peace and dignity of the state"), contained in the Bill of Rights, Article II of the Constitution of 1875.

The present Constitution permits a verdict by nine or more jurors in a civil case, but does not permit this in criminal cases. We believe this article should be amended so as to permit a verdict to be returned by not less than ten jurors in all criminal cases except where the punishment assessed is death or imprisonment for life. We are satisfied that jurors are discharged in many cases because one or two men through obstinacy, and in some cases from bad motives, will prevent a verdict and we have no doubt that there are cases where a few determined jurors have won over the others to a verdict of not guilty, against their own convictions, rather than remain from their homes for several days after the case has been submitted to them.

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[1] In one case, a peculiar situation presented itself. The prosecuting attorney had for some reason charged the defendant in two counts with the same offense, the two counts being in all respects alike. The jury evidently believed defendant guilty, but realized that he had committed but one offense, and therefore should not be convicted of two, and being more concerned about the justice of their verdict, than its formal logic, found him guilty as to one count, and not guilty as to the other. The Supreme Court held the verdict to be contradictory, and reversed and remanded the case.

Several cases have been reversed in the period under review because it was attempted to convict the defendant of a different crime than that charged, and in one or two cases rather fine distinctions were drawn, but this is no reason for attempting to alter the constitutional provision. On a charge of embezzlement, it was held a violation of the constitution to convict for larceny. This occurred in three cases; (State vs. McBrian, 265 Mo. 594; State vs. Bowman, 247 S. W. 143; and State vs. Caudle, 252 S. W. 701); and a conviction was set aside where the charge was that of receiving stolen property and the conviction was for receiving embezzled property (State vs. George, 263 Mo. 686); and the failure to allow an opportunity to file a motion for a new trial was held a violation of the provision of due process of law (State vs. Guerringer, 265 Mo. 408). Then there were two or three cases where it was held that the defendant had been in former jeopardy and should not have been tried again, and one where a defendant was indicted in the wrong county, (State vs. Howard, 264 Mo. 386). While no lawyer would claim that the state should be permitted to charge a man with one offense and try him for an entirely different one, nor that the provision, as it appears in our constitution, which protects a person from being tried a second time for an offense of which he has been acquitted, should be changed, nevertheless it must be clear that in some of the cases just cited over-refined distinctions were drawn.

ERRORS IN INSTRUCTIONS

The most prolific cause for reversals has been the action of trial courts in giving instructions. Table III shows that not less than 116 cases out of a total of 329 were reversed mainly on this ground. In quite a number of other cases, the instructions were criticized, but as the reversal was placed more particularly on other grounds, such cases were put in other classes.

The statute requires the court to instruct the jury on all questions of law arising in felony cases, whether thereunto requested or not, and further, forbids the court to comment upon the evidence. The possibilities of error are therefore numerous. Not only may the trial judges misconceive the law and therefore lay down incorrect principles, but they may, in the hurry of the trial, use awkward or misleading language or omit some qualification of a stated principle. They may not instruct on all questions of law arising in the case, entirely overlooking some matter. There is also the constant danger of assuming some fact in the instructions which is really disputed, or using some expression which will be held to be a comment upon the evidence.

Many will be surprised to know that faulty instructions are the principal ground for reversals in criminal cases, for the general impression among lawyers, as well as laymen, is that the criminal law is so well settled, and the principal instructions have been approved by the Supreme Court so often as to have become stereotyped. It is true that in the Circuit Court of St. Louis more than one hundred instructions have been printed, because they have been, or are supposed to have been, approved by the Supreme Court. The fact, however, that most reversals are due to faulty instructions, is no doubt due to carelessness of trial judges, or prosecuting attorneys, who too often throw the entire burden of preparing instructions upon the trial judges; to a lack of knowledge of the law on the part of some trial judges, as well as slips which may be made by the most competent and careful judges. Motions for new trial are not often argued or briefed in the trial courts, so that they are not often given a real opportunity to discover and correct error occurring in the instructions or otherwise.

But troubles have arisen for which the trial judges are in no wise to be blamed. They have been criticized by the highest court on numerous occasions for not following approved forms of instructions, and as a result they naturally and wisely endeavor to give instructions in the form which has met the approval of the Supreme Court. Now, within the period under investigation, the highest court has disapproved three forms of instructions, one of which is given in all of the numerous cases where the defendant testifies; and the other two, in cases not so frequently arising but still not of infrequent occurrence. We shall now consider these three classes of cases.

Defendant a Competent Witness, but Jury May Consider His Interest.

The statute provides that a defendant is a competent witness in his own behalf, but that the jury may consider his interest in weighing his testimony. An instruction telling the jury that the defendant is a competent witness in his own behalf, but that in weighing his testimony, the jury may consider the fact that he is a defendant and his interest in the result of the trial, had been approved by the Supreme Court in a long line of cases, and was consequently given almost as a matter of routine. Then, on January 29, 1917, in the case of State vs. Finkelstein, 269 Mo. 612, the court held that such an instruction was an unwarrantable comment on the evidence and reversible error. This ruling was followed in State vs. Pace, 269 Mo. 681, February 2, 1917, and State vs. Gulley, 272 Mo. 484, December 4, 1917, and has no doubt been the cause of granting a number of new trials by the trial courts.

Possession of Recently Stolen Property.

In cases of larceny, where there was no direct evidence of defendant having stolen the property, an instruction had been approved in a long line of cases which told the jury that possession, sole and exclusive, of property recently stolen, raised a presumption that the one in possession was the thief, unless the possession was satisfactorily accounted for by the evidence. Between January 1, 1915, and May, 1922, instructions laying down this rule were approved in about ten cases, when in State vs. Swarens, 241 S. W. 934, May 22, 1922, a thoroughly considered case, the instruction was condemned by the court *en banc,* one of the judges dissenting. This change of doctrine came about only after some hesitation, for in State vs. Linders, December 22, 1922, 246 S. W. 558, Judge Higbee stated that he agreed with the dissenting opinion of Judge Walker in the Swarens case. But the doctrine of the Swarens case has prevailed.[1] In overruling its former decisions the court followed the weight of authority throughout the country. Naturally this reversal was followed by a number of others. An instruction telling the jury that possession of recently stolen property could be considered by them, together with other facts in passing on the guilt or innocence of defendant, would probably be approved.

Flight.

Another instruction which had been frequently approved and which was also condemned within the last few years is that which refers to flight. Instructions on this point which were so worded as to assume that the defendant was guilty had of course been condemned, but instructions telling the jury that flight raised a presumption of guilt had been frequently approved.

A year after the above mentioned decision in State vs. Swarens, 241 S. W. 934, May 22, 1922, the Supreme Court in the case of State vs. Hogan, 252 S. W. 387, June 11, 1923, a robbery case, condemned an instruction on flight, because it told the jury that unexplained flight raised a presumption of guilt. This case closely followed the reasoning of the court in the Swarens case.

Then in State vs. Jordan, a murder case, 268 S. W. 64, December 18, 1924, the court condemned an instruction on flight because it assumed the guilt of the defendant, but the court pointed out that an instruction on flight was not necessarily a comment on the evidence.

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[1] State vs. Barker, 246 S. W. 909; State vs. Wagner, 252 S. W. 695.

The Supreme Court, in State vs. Meininger, 268 S. W. 71, decided January 15, 1925, while condemning an instruction on flight because it assumed that a crime had been committed when that was a fact in controversy in the case, took occasion to point out that the flight instruction in proper form including the presumption of guilt had been approved in many cases, and none had been reversed on that ground (*i.e.* statement that flight raised a presumption of guilt) until the Hogan case. The court after quoting from State vs. Witten, 100 Mo. l. c. 530, proceeds to say that to tell the jury, "that flight raises a presumption of guilt," is a comment, for it tells the jury the evidence has a designated effect, citing the Hogan case.

The view of the court apparently is that to tell the jury that flight, (or the possession of recently stolen property) raises a presumption of guilt, does not state the law correctly, but that the jury may be told that in reaching a decision they may take into consideration the flight of defendant, (if they find he fled). These instructions we think are subject to criticism not because they contain an improper comment, but because they do not state the law correctly.

Thus it seems that the present state of the law is that a flight instruction may be given, but it should not tell the jury that flight raises a presumption of guilt, and it must not assume that defendant is guilty. This conclusion is drawn from the cases herein cited, and is borne out by the very recent case of State vs. Frank Turner, No. 26078, decided in 1925, in which an instruction on flight was approved, so that we have a precedent which it may fairly be assumed will be followed.

Commenting on the Evidence.

The Supreme Court has uniformly condemned instructions which contain comments on the evidence, but some difficulty has been experienced in distinguishing between comments on evidence and statements of the law with respect to certain classes of evidence. Instructions telling the jury that a defendant in a criminal case is a competent witness on his own behalf, but that the jury may consider the fact that he is a defendant and his interest in the event of the case in passing on the credibility of his testimony, have been condemned on the ground that they contained a comment on defendant's testimony. Strictly speaking, it is not a comment on the evidence. General instructions upon the credibility of witnesses, telling the jury what facts they may take into consideration in passing upon the credibility of witnesses and the weight to be given their testimony are customarily given and have never been regarded as containing comments on the evidence.

The courts have uniformly given an instruction in cases where the state read in evidence a statement by the defendant, in which the jury are told that whatever statements defendant made against himself are presumed to be true, but that the jury are not required to believe evidence of statements made by him in his favor, merely because the statements were proven by the state. This instruction has been consistently and properly approved, despite the objection that it was a comment upon the evidence. It merely explains the law to the jury. Statements by a person against his interest are admissible against him, on the theory that no one would make statements or admissions against his interest, unless they were true, and therefore there is a presumption (rebuttable of course) that they are true. Just as clearly, self-serving statements are not evidence in one's favor. It is also true that when the state offers in evidence a statement made by a defendant, it must offer all of it. Without the cautionary instruction, the jury might well believe that inasmuch as the statement was offered by the state, they must regard all parts of it as being in a manner vouched for by the state.

As was pointed out by Judge Black, in State vs. Witten, 100 Mo. 530, there are numerous cases in which such instructions should be given. Others could be pointed out in addition to those cited by him. For instance the jury are in some cases instructed that a man is presumed to intend the natural consequences of his act, and if he uses a deadly weapon upon the vital part of another, it is presumed he intended to kill. In some cases, the jury are told that in the absence of certain evidence, it is presumed that the homicide was murder in the second degree. (For other instances of presumptions see State vs. Kelly, 73 Mo. l. c. 611.) Where the law draws certain inferences, it should not be considered a comment to advise the jury of this fact.

The rulings of the courts on the error of commenting on the evidence are based upon a statute in existence since 1855 which reads:

> "The Court shall not in the trial of the issues on an indictment, sum up or comment on the evidence, or charge the jury as to matter of fact, unless requested . . . but the Court may instruct the jury on any point of law arising in the case, which instruction shall be in writing."[1]

The Legislature no doubt having in mind the practice obtaining in the English Courts, and in our Federal Courts, where judges not only instruct the jury as to the law, but charge them as to the facts, summing up the evidence and giving their views upon the credibility of the witnesses and the weight to be given certain evidence, and acting upon the theory that, if the jury were to be the triers of the facts, they should be permitted to make their findings without being influenced by the judge, by this statute deprived the judges of the right to sum up or comment on the evidence. The Supreme Court in its desire to give full effect to the legislative purpose has at times gone far in holding that certain words in instructions amounted to comments on the evidence. Whether the language in a given instruction amounts to a comment on the evidence may become a close question. To express an opinion as to the credibility of a witness, or the weight of the evidence, would clearly be such comment. On the other hand to state a rule of law relating to evidence could not be said to be a comment on the evidence. This distinction has been pointed out in State vs. Creeley, 254 Mo. 386, January 6, 1914, where answering the objection which had been urged that an instruction was bad because it contained a comment on the evidence, the court said:

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[1] R. S. Mo. 1919, Section 4038. 2 R. S. 1855, p. 195.

> "From what has been said we deduce the true rule to be that when evidence is introduced which, under either the statutes or common law as it now exists in Missouri, is entitled to less or more weight than ordinary evidence, it is not error for the court to instruct the jury how such evidence must be weighed. Such instructions are the comment of the law, or the rule which the law has prescribed for determining the effect of such special classes of evidence, and form exceptions to the general rule that courts shall not comment upon evidence—"

Of course the rule must be correctly stated and the objection to the flight instruction where it speaks of a presumption of guilt arising from flight is that the law does not in fact raise such presumption, but that flight is simply a fact to be considered by the jury in reaching their verdict.[1]

It is interesting to note that the court has in a very recent case clarified a point that has been involved in some uncertainty. There has been a question as to whether the instruction defining larceny must describe the taking as "felonious." Except as to the offense of larceny, it had been held quite uniformly that the word "feloniously" need not be used in the instruction defining the offense, but an exception was made in some cases as to larceny. Within the past few months the Supreme Court has clearly decided that this word need not be used in the larceny instruction, but that an equivalent term would answer.[1]

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[1] Comments on Evidence. It is no more a comment on the evidence to tell the jury that in passing on defendant's guilt or innocence they may consider flight, or the possession of recently stolen property, or that admissions made by him are competent evidence, than it is a comment to tell them that they may consider his good character, or evidence of an alibi, or that testimony of an accomplice should be received with caution. In a way these may be regarded as comments, since they seem to stress certain parts of the evidence, but it can not justly be said that such instructions invade the province of the jury so long as the weight to be attached to the evidence is left to its determination.

There are serious difficulties attending the framing of instructions, and even the most careful judge may use inaccurate language, or expressions which may be misunderstood, or, in stating a principle, may overlook some qualification, or may inadvertently overlook a word, or insert one improperly. Such errors and slips are unavoidable, but they could easily be corrected if counsel were required by statute to point out the defects immediately after the reading of the instruction, and to require this would not work a hardship or injustice upon the defendant. If, at the time of trial, counsel find no such ambiguity in the instruction as to prevent their presenting the law to the jury correctly in their argument, it is neither fair nor just that on appeal they should be permitted to contend that the jury was probably misled by the wording of the instruction; nor should counsel be permitted to complain that the court has failed to instruct upon some question of law arising only incidentally, without having called the trial court's attention to the alleged omission and requested it to cover the point.

This brings us to the consideration of an important statute, and its influence in bringing about reversals of criminal cases.

The statute provides:

> "Whether requested or not, the Court must instruct the jury, in writing, upon all questions of law arising in the case which are necessary for their information in giving their verdict; which instructions shall include, whenever necessary, the subjects of good character and reasonable doubt; and a failure to so instruct, in cases of felony, shall be good cause, when defendant is found guilty, for setting aside the verdict of the jury and granting a new trial."[2]

This statute seems clear and explicit, yet in its application difficulty has been experienced. It requires instructions on all questions of law "necessary for their information in giving a verdict" and shall include "whenever necessary" instructions on the subjects of reasonable doubt and good character. While the statute is peremptory in terms, it requires the court to instruct only on questions of law "necessary for their information in giving a verdict." This would seem to include an instruction as to what constitutes the offense charged, and the punishment prescribed, and what facts constitute affirmative defenses; also that if the state failed to prove beyond a reasonable doubt all the facts necessary to constitute the crime, the defendant must be discharged.[1]

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[1] State vs. Tipton, May 9, 1925, 271 S. W. 55.
[2] R. S. Mo. 1919, Section 5231.

Just what instructions are "necessary" for the jury's information in giving a verdict, is often a close question, and this difficulty is reflected in the decided cases, for in some opinions we find the court brushing aside the objection that the trial court failed to instruct the jury fully with the answer that if defendant desired an instruction on such a point he should have requested one; while in other cases the court points out the statute and its requirement to instruct whether thereunto requested or not. In some of the latter cases the court has intimated, if indeed it did not state directly, that the court had in many cases overlooked the command of the statute. The peremptory character of the statute is fully recognized in the latest decisions.[2] In our opinion many of the cases can be reconciled by distinguishing between questions of law *necessary* to enable the jury to reach a correct verdict and such as are merely incidental and not essential to an understanding of the issues.

ERRORS IN ADMITTING OR EXCLUDING EVIDENCE

Next to errors in instructions, the most prolific cause of reversals has been errors in admitting and excluding evidence. Table III shows that there were eighty cases in all reversed on such grounds, of which sixteen were cases in which the cross-examination of defendant or his wife had been permitted to go beyond the matters covered in the examination-in-chief. The likelihood of securing an amendment to the statute so restricting the cross-examination is discussed in a subsequent section. The proof of some other crime beside the one for which defendant was on trial has been the cause of quite a number of reversals. The general rule is that unless defendant is charged under the habitual criminal statute, evidence of other crimes committed by him may not be introduced, the reason no doubt being that proof of such crime would prejudice the jury against him and might well cause a conviction on insufficient evidence. There are exceptions to the rule, and because of these exceptions it becomes difficult in some cases to determine whether the evidence of some other crimes should be admitted. Again, a considerable number of cases have been reversed because of the admission in evidence of alleged confessions of the defendant. Such confessions to be admissible must be voluntary, not the result of threats, abuse, or any kind of coercion on the one hand, or of promises of immunity or favor on the other. Almost always when a confession to officers of the police (in large cities) is offered in evidence, objections are raised that it was procured by some species of cruelty. Trial judges have in many cases admitted such alleged confessions, only to have the convictions set aside by the higher court. The Supreme Court, however, has been quite liberal in holding such confessions admissible. It is so improbable that one suspected of crime will, of his own accord, confess his guilt, that such confessions, even when admitted in evidence, are in many, if indeed not in most cases, discredited by the jury.

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[1] While the statute requires instructions on reasonable doubt and the good character of defendant "whenever necessary," the courts uniformly give the instruction on reasonable doubt, and where there is substantial evidence of defendant's good character, especially in close cases, the court would doubtless hold that an omission to instruct on the point would be reversible error. Indeed it has been held error to fail to instruct on alibi where there is substantial evidence to prove that defense. The absence of such an instruction could hardly prejudice a defendant, for no juror possessing intelligence enough to understand an instruction would have to be told, that in any crime requiring the presence of defendant at the time and place of its commission, that he could not have committed it if he was somewhere else.

[2] State vs. Jackson, 267 S. W. 855.

So long as close questions will arise upon which judges may well differ as to the application of these rules of evidence, just so long will cases occur in which the higher court will reverse the decisions of trial courts. It must be remembered that the trial judge is required to pass upon these questions promptly as they arise, and cannot give them the careful study which the higher court can and does give them. They might discover their errors and grant new trials, if counsel prepared and argued such matters as carefully in presenting their motions for a new trial as they do when they present the case in the higher court. No preventive for errors in rulings on evidence has been discovered. Competent and careful trial judges, familiar with the law of evidence, commit few errors in this regard, but so long as zealous prosecutors offer incompetent evidence and object to competent evidence offered by defendants, and the courts err in their ruling thereon, just so long will reversals be inevitable, and no thinking person expects perfection in judges or attorneys. Some improvement may be expected when the people exercise more care in the selection of their judges and prosecuting attorneys.

Defective Indictments[1]

The Statute of Jeofails.

No discussion of the all important question of defective indictments can be intelligible without a clear understanding of the meaning and the purpose of statutes of jeofails. These statutes which are found throughout the Anglo-Saxon legal world permit amendment or correction of errors made by the pleader when he perceives such an error and acknowledges it, (jeofaile—I have failed or I am in error).

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[1] In speaking of defective indictments and informations, we shall use the word "indictments" or "informations" as including both in order to avoid multiplication of words; and also when we speak of "reversals," we shall use the term in a broad sense as including not only cases of outright reversal and discharge of the defendant, but cases that are reversed and remanded.

The first of these statutes was passed shortly after the Norman Conquest, and this was followed by numerous others from time to time, but as late as Blackstone's time none of them extended to indictments or criminal proceedings.

While not strictly a statute of jeofails, since it makes no provision for amendment, the statute passed in 1545, during the reign of Henry VIII is the forerunner and prototype of the existing statutes of jeofails. This statute we quote in full, not only because of its provisions, but because the recitals contained in it show a keen appreciation of the incongruity of the law as it then existed.

> "The act that any indictment lacking these words, 'Vi et armis' shall be good.
>
> "Whereas, before this time it was, and yet is, commonly used in all indictments and inquisitions of treason, murder, felony, trespass and other, to have comprised and put in every the same indictments and inquisitions these words, Vi & armis, and in divers of the same to declare the manner of the force and arms; that is to say, Vi & armis, videlicet, baculis, cultellis, arcubus & sagittis, or other such like words in effect, where of the truth the parties so indicted had no manner of such weapons at the time of the said offense, committed and done; (2) yet in default and lack of the same words, the said indictments were, and yet be, taken as void in law, for to put any person to answer thereto; (3) and the party or parties so indicted for lack of the same words not being comprised, and put in the said indictment or inquisition advantage thereof have avoided the said indictments by writ or writs of error, or by plea upon his or their appearance as the same case did require; (4) for reformation whereof, be it enacted by the King, our sovereign lord, with the assent of the lords, spiritual and temporal, and of the commons, in this present parliament assembled, and by the authority of the same, THAT, from the Feast of the Nativity of our Lord God, next coming, these words, Vi & armis, viz., cum baculis, cultellis, arcubus and sagittis, or such other like words, shall not of necessity be put or comprised in any inquisition or indictment," etc.[1]

As early as 1825, the Legislature of Missouri passed an Act providing:

> "That hereafter no indictment shall be quashed or set aside for want of the words, 'with force and arms,' or any such words, and indict-

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[1] 37 Henry VIII Ch. 8.

> ments and proceedings in criminal cases may be amended in point of form at any time before the jury are sworn for the trial of the case."

Thereafter, in State vs. Curran, 18 Mo. 320, March Term, 1853, in which the indictment charged that the defendant assaulted Silas Mehlville, while the proof showed that his name was "Melvin," the Supreme Court held that this was a fatal variance and that the defendant should have been acquitted.

Thereupon, in 1855, the Legislature amended the statute and not only adopted the provisions of 14 and 15 Victoria, Chapter 100, passed 1851, both as to variances and defects in indictments but strangely enough in the margin where this Act is printed, there is a specific reference to the English Statute, leaving no doubt as to the origin of the amendment. The preamble to this Chapter 100 of 14 and 15 Victoria contains the following recital:

> "Whereas, offenders frequently escape by reason of the technical strictness of criminal proceedings, in matters not material to the merits of the case and where such technical strictness may safely be relaxed in many instances so as to secure the punishment of the guilty without depriving the accused of any just means of defense; and whereas, a failure of justice often takes place on the trial of persons charged with felony and misdemeanor by reason of variance between the statement of the indictment on which the trial is had and the proof of names, dates, matters and circumstances therein mentioned not material to the merits of the case, and by misstatements whereof the person on trial cannot have been prejudiced in the defense."

In 1879, this section was again broadened by adding the words,

> "nor for any error committed at the instance or in favor of defendant, nor because the evidence shows him to be guilty of a higher degree of the offense than that of which he is convicted."

And then, in the revision of 1889, the statute is still further extended in its application by adding the words,

> "nor for any other defect or imperfection which does not tend to the prejudice of the substantial rights of the defendant upon the merits; Provided that nothing herein shall be so construed as to render valid any indictment which does not fully inform defendant of the offense of which he is charged."[1]

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[1] The Statutes of Jeofails, in the present form, which is the same as in the revision of 1889, read:

"Sec. 3907. Variance between charge and proof.—Whenever on the trial of any felony or misdemeanor, there shall appear to be any variance between the statement in the indictment or information and the evidence offered in proof thereof, in the christian name or surname, or both christian name and surname, or other description whatsoever, or any person whomsoever therein named or described, or in the name or description of any matter or thing whatsoever therein named or described, or in the

The action of the successive legislatures in amending and broadening this beneficent statute is a convincing evidence that the lawmaking body was responsive to the general public sentiment in favor of having criminal cases tried upon their merits, with only such regard for form as fairness and substantial justice required and the very proviso in this last quoted amendment is strong proof of the legislative intent.

The fact that the statute of jeofails has been frequently invoked in recent years as compared with the earlier period is due no doubt, in part, to the fact that its terms have been so broadened by these amendments from time to time, but also to a more liberal attitude of the court.

Cases Recently Reversed.

In the period studied twenty-eight cases were reversed because of defective indictments. While the proportion of cases reversed for this reason is not large, they deserve a somewhat detailed consideration because it is in such reversals as these that the Supreme Court so often is subjected to criticism for an excessively "technical" point of view. We shall, therefore, discuss a few characteristic cases in which the court reversed cases for defective indictments, and a number of others in which the Supreme Court refused to reverse

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ownership of any property named or described therein, such variance shall not be deemed grounds for an acquittal of the defendant, unless the court before which the trial shall be had shall find that such variance is material to the merits of the case and prejudicial to the defense of the defendant." (R. S. Mo. 1919, Sec. 3907.)

"Sec. 3908. Indictments, when not deemed invalid.—No indictment or information shall be deemed invalid, nor shall the trial, judgment or other proceedings thereon be stayed, arrested or in any manner affected: First, by reason of the omission or misstatement of the defendant's title, occupation, estate or degree, or of the county or town of his residence; or, second, by the omission of the words 'with force and arms,' or any words with similar import; or, third, by omitting to charge any offense to have been contrary to a statute or statutes, notwithstanding such offense may have been created or the punishment declared by a statute, or, fourth, for the omission of the words, 'as appears by the record,' nor for omitting to state the time at which the offense was committed, in any case where time is not of the essence of the offense, nor for stating the time imperfectly; nor for stating the offense to have been committed on a day subsequent to the finding of the indictment or information, or an impossible day, or on a day that never happened; nor for want of a proper or perfect venue; nor for want of any venue at all; nor for want of a statement of the value or price of any matter or thing, or the amount of damages, injury or spoil in any case where the value or price, or the amount of damages, injury or spoil is not of the essence of the offense; nor for the want of an allegation of the time or place of any material fact, when the time and place have once been stated in the indictment or information; nor that dates and numbers are represented by figures; nor for an omission to allege that the grand jurors were impaneled, sworn or charged; nor for any surplusage or repugnant allegation, when there is sufficient matter alleged to indicate the crime and person charged; nor for want of the averment of any matter not necessary to be proved; nor for any error committed at the instance or in favor of the defendant; nor because the evidence shows or tends to show him to be guilty of a higher degree of the offense than that of which he is convicted; nor for any other defect or imperfection which does not tend to the prejudice of the substantial rights of the defendant upon the merits: Provided, that nothing herein shall be so construed as to render valid any indictment which does not fully inform the defendant of the offense of which he stands charged." (R. S. Mo. 1919, Sec. 3908.)

the lower tribunal despite such alleged defects. We shall also consider a number of cases decided earlier than 1915 in order to indicate the trend of opinion in the court since the decision of State vs. Pemberton in 1860, a decision which has had a marked influence upon the development of the law upon this subject.

In State vs. Cline, 264 Mo. 416 (1915), the charge being murder, the information *in its conclusion* charged that defendant "did feloniously * * kill and murder," but omitted to give the name of the person killed. While the information is not copied in the opinion, it is reasonable to assume that the name of the deceased was stated in the earlier part of the information. The Supreme Court held that the common law conclusion to an indictment must be followed and that this rule applied also to an information; also that the defect was not cured by the statute of jeofails, citing State vs. Meyers, 99 Mo. 107; State vs. Pemberton, 30 Mo. 876 and other cases.

In the case of State vs. Siegel, 265 Mo. 239, decided 1915, a case of fraudulent voting, a statutory offense, the information was held to be fatally defective because it omitted the word "feloniously" although that word was not used in the statute creating the offense. There is a long and unbroken line of cases in Missouri holding that indictments and informations charging common law felonies must use this word "felonious" or "feloniously," but the rule has not been uniformly applied to informations charging statutory offenses,—especially where the statute itself does not require the act to have been feloniously done. Thus in the case of State vs. Burgess, 268 Mo. 407, decided a little over a year later, it was held that an information charging embezzlement (also a statutory crime) need not allege that the embezzlement was felonious or fraudulent, since the word embezzlement includes the idea of a fraudulent conversion. While the Missouri Court followed the weight of authority it is doubtful whether the prevailing rule is a sound interpretation of statutes of jeofails similar to ours. It is therefore recommended that a statute be enacted to the effect that an indictment or information omitting the word "felonious" or "feloniously" shall not be deemed invalid after verdict.[1]

In State vs. Wade, 267 Mo. 249, decided March 1, 1916, where defendant was charged with maintaining a gambling device (a craps table), the information was held fatally defective because it did not sufficiently describe the table, this decision overruling a line of cases in which the court had sustained informations containing the same allegation as to the table. (185 Mo. 114; 188 Mo. 415; 203 Mo. 581; 228 Mo. 480). This decision was followed in State vs. Morris, 199 S. W. 144, and State vs. Crayne, 216 S. W. 46, decided within the next two years.

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[1] Without citing the many cases pro and con on this question, we might refer to two cases in which the reasons for holding it unnecessary to insert this word in indictments, are stated with clearness and vigor. State vs. Felch, 58 N. H. 1. Richards vs. State, 65 Nebr. 808.

In State vs. Evans, 217 S. W. 30, (1919), the information in a burglary case was held to be bad because it failed to state whether the J. B. Brookshire Company, whose place had been burglarized, was a corporation or a partnership, following a line of cases in Missouri, in which the identical question had been decided. In the early case of State vs. Shields, 89 Mo. 259, the court had decided that an indictment need not allege the incorporation of the railroad whose place was alleged to have been burglarized; but the court, in subsequent cases, expressly refused to follow that decision, holding it to have been erroneous. State vs. Henschel, 250 Mo. 263, and cases therein cited. State vs. Winer, 263 Mo. 357.

State vs. Whelan, 248 S. W. 931, February 23, 1923, grew out of the breaking into a bank by a number of young men, and their stealing therefrom the sum of $32.30. The information attempted to charge burglary and larceny, alleging that defendants broke and entered the bank building by breaking through the outer window of the same, and entering in thereat,

> "and with the intent unlawfully, feloniously and burglariously to take, steal and carry away the money, notes, checks, etc., in said bank kept and deposited, and did steal and carry away $32.30."

It was held that the information did not sufficiently allege that the bank was "feloniously and burglariously" broken into and entered, notwithstanding the use of the language just quoted. Perhaps the very critical attitude of the court with relation to this information may be explained in part by the fact that the defendant's attorney, according to the record, did not file his motion for a new trial within the proper time, and therefore the Supreme Court could consider only the record proper, and so held, notwithstanding the fact that defendant's counsel undertook by affidavit filed in the Supreme Court, to show that the trial judge had stated that the court would not adjourn for the term until May 6, and, relying upon this, counsel filed a motion for new trial on May 5, 1921, but that the court had theretofore, on May 3, adjourned for the term, and the further fact that the jury assessed a rather severe punishment, namely, twenty years in the penitentiary. In this burglary there were implicated a number of young men, one of them being Robert Hays, who was tried separately, and whose case reached the Supreme Court after the Whelan case. In this case, State vs. Hays, 252 S. W. 380, (1923), the court was called upon to consider an information which was almost identical with that which it had held insufficient in the Whelan case, and, to be consistent, was compelled to hold that it was insufficient. In this case the jury assessed the punishment at forty years in the penitentiary. The unusual feature in the Whelan case, however, (the filing of the motion for new trial out of time) was absent in this case.

A case in which the court seems to have been very critical in passing upon the validity of an information is—

State vs. Jamerson, 252 S. W. 682, (1923). Defendant was charged with murder, the language being that he shot *L. H. Brannon*—

> "giving him, the said L. H. Brannon * * * three mortal wounds * * * of which mortal wounds the said L. H. Brannon then and there did languish, and languishing did live until the 15th day of September, 1921, in the County of Shelby and State of Tennessee did die. * * *"

The language of the information is, of course, far from artistic, nor is its meaning clear. However, the evidence showed that Brannon was shot by defendant on September 14, 1921, the day before his death, and doubtless this was averred in the prior part of the information. The reasoning of the court was that this information did not show that Brannon died from the effects of the mortal wound inflicted upon him on the preceding day, citing a number of early cases in this state, including State vs. Testerman, 68 Mo. 413, which went so far as to hold that the allegation that the deceased (who was shot) "languished and languishing did immediately die," failed to state where he died, the court holding that the indictment must allege the time and place of death. As the information had in the earlier part alleged the assault by defendant in a certain place, it would seem that if the victim died immediately that he must have died at the place where the shooting occurred. Not only is this Jamerson case rather technical, though the language of the information as has been said, is faulty, but the cases cited in its support are early and we think it may be said extreme cases. It should be added that there were other reversible errors in this case.

Time and space do not permit a reference to each of the cases reversed and remanded because of defective indictments, but the foregoing are the more important ones. It may be added that among those not specifically referred to, there were three in which the charge was "fraudulent pretenses," in two of which the informations showed on their face that the cases were barred by the Statute of

Limitations. There were also a number which were clearly defective in matters of substance.

Recent Decisions Sustaining Indictments.

We have now presented a number of the more important cases which were reversed because of defective indictments. It is equally important to set forth a number of typical cases in which indictments were held good in spite of alleged defects. The number and character of these is a very interesting commentary upon the attitude of the court.

In a number of cases indictments were sustained in spite of errors in spelling:

> In State vs. Pfeiffer, December 23, 1918, 209 S. W. 925, a sodomy case, the word "threusing" was used instead of "thrusting." In State vs. Byrd, June 3, 1919, 213 S. W. 35, a murder case, "premediately" was used instead of "premeditatedly," and in State vs. Stokes, 232 S. W. 106, defendant's name was misspelled "Stotes."

In a very considerable number, omissions of words or phrases were held not fatal to indictments:

> In State vs. Borders, 199 S. W. 180, December 4, 1917, a murder case, the indictment entirely omitted to allege the place of the death of deceased, but the indictment was held good. In State vs. Massey, 204 S. W. 541, June 3, 1918, the information read that defendant "unlawfully and feloniously make an assault," omitting the word "did," but it was held good. In State vs. Hawkins, 210 S. W. 4, March 4, 1919, the charge being abortion the information showed a like omission of the word "did," but it was held not fatal. So in State vs. Ruddy, 228 S. W. 760, a prosecution for perjury, the information was held good though it failed to state the date of the perjury.
>
> And in State vs. Wilson, 237 S. W. 776, February 18, 1922, a robbery case, the word "take" was omitted from the phrase "feloniously did rob, steal (take) and carry away."
>
> In State vs. Baird, 248 S. W. 597, February 23, 1923, the information charging murder in first degree, instead of alleging that defendant "upon one C. * * * did make an assault *with* a dangerous and deadly weapon," omitted the word *"with,"* yet the information was held good. In one case the indictment which in four places used the expression "malice of aforethought," was held good, State vs. Swearingen, 269 Mo. 177, December 6, 1916; and in one case of carnal knowledge, State vs. Allen, 267 Mo. 49, February 2, 1916, the indictment gave the ages of defendant and prosecuting witness as of over seventeen and fifteen, respectively, while at the time the offense was committed, the statute referred to the ages of sixteen and fourteen, respectively. The ages alleged were within the statute and could

not prejudice defendant. The court held that the Statute of Jeofails cured the error.

In State vs. Craft, June 11, 1925, 253 S. W. 224, an indictment for robbery in the first degree which charged that the defendant took $3500.00 in the presence of and against the will of the said Irwin Waller was attacked, but the court held that the words, "in his presence" were tantamount in meaning to the words, "from his person."

A miscellaneous group of alleged faults in indictments is shown in the following cases in which the Supreme Court held the irregularity not fatal:

An information charging embezzlement is good though it does not allege that the embezzlement was felonious or fraudulent.[1]

In a manslaughter case where it was claimed that the information was duplicitous, the court disregarded part of the allegations treating them as surplusage and held the information good.[2]

An information for arson need not state the name of the owner of the burned building.[3]

An information charging the offense to have been committed on a date six months subsequent to the date of the information was held good.[4]

This error was covered by the very terms of the Statute of Jeofails, as was also the objection to an indictment in another case, that it failed to show that the Grand Jury returning it had been impaneled.[5]

And in State vs. Foster, 220 S. W. 958 (March 13, 1920), where the charge was assault to kill, and the information used the words "to do great bodily harm," it was held good.

Variances.

In the following cases, where it was claimed that there was a fatal variance between the charge and the proofs, the Court held that the variances were not material, and therefore were cured by the section of the Statute of Jeofails covering variances, to-wit:

In State vs. Glazebrook, 242 S. W. 928 (decided June, 1922), a variance as to the date when the goods were stolen, the case being one of receiving stolen property, was held immaterial.

And in State vs. Wade, 267 Mo. 249, where defendant was charged with maintaining a gambling device at 118 North Fifth Street, and the evidence showed that it was 118½ North Fifth Street, two out of five judges thought the variance fatal. However, the case went off on the sufficiency of the information, the decision on that point reversing a line of prior decisions, as has been heretofore mentioned.

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[1] State vs. Burgess, July 5, 1916, 268 Mo. 407, referred to in connection with State vs. Siegel, supra.

[2] State vs. Jones, July 16, 1917, 197 S. W. 156.

[3] State vs. Ritter, 231 S. W. 606.

[4] State vs. Smith, 237 S. W. 482—1922.

[5] State vs. McBride, 231 S. W. 592—1921.

And in State vs. Small, 199 S. W. 127, the court held that the question of variance had not been properly raised in the trial court.

Alleged Procedural Errors.

In the following cases, where it was claimed that the court should reverse because of procedural errors, the objections were overruled.

In State vs. Murphy (January 2, 1922), 237 S. W. 529, a murder case, a witness was called, sworn, and a number of questions were put to him when the court discovered the absence of the defendant. The latter was immediately brought in and the questions were repeated. The court overruled an objection and the Supreme Court sustained it.

In several cases the Supreme Court has overruled objections on the ground that the jury was permitted to separate without the permission of the court. State vs. Hatcher, 259 S. W. 467; State vs. Lemon, 263 S. W. 186.

In State vs. Sparks, 263 Mo. 609 (February 23, 1915), where it was objected that the record failed to show the allocution, the court held that it would be presumed.

And in State vs. Allen (1916), 267 Mo. 49, it was held that the failure of the record to show either an arraignment or a plea would not be ground for reversal, the record not showing that any objection was made to the omission.

In State vs. Thomas, 256 S. W. 1028 where the record failed to show a change of venue the Supreme Court ordered the clerk of the trial court to certify a copy of the order.

Earlier Decisions on Defective Indictments.

A reference to some of the earlier decisions of the Supreme Court seems necessary, not only because among them will be found precedents which will explain a number of these later decisions, but also to contrast them with the more recent decisions just referred to, and discover whether there has been a change in the attitude of the court with respect to purely technical objections.

In the early case of State vs. Pemberton, 30 Mo. 376, (1860) the charge being murder, it was held that the first count of the indictment was bad because it did not conclude with the words—"against the peace and dignity of the state," and the second count because it did not in the conclusion repeat the name of the person who had been killed, and that the statute of jeofails did not cure this omission. This case will be discussed more fully later on.

In a later case, ex parte Slater, 72 Mo. 102, in proceedings by way of habeas corpus in the Supreme Court, the petitioner was confined in the jail of Audrain County, by virtue of a warrant issued by the circuit court of Stoddard County, upon an indictment found by the grand jury of Scotland County, charging the petitioner with the crime of murder. The court held that under the Constitution the petitioner had the right to have the charge preferred by indictment as was known at common law, which was "an accusation at the suit of the King (State) by the oaths of twelve men at the least and not more than twenty-three *of the same county wherein the offense was committed* returned to inquire of all offenses in general in the County, etc."

It was contended that Section 1804 of the Revised Statutes authorized the finding of an indictment under circumstances such as existed in the case at bar, to be found in some other county than that in which the crime had been committed. But the Supreme Court held that the statute was utterly void as being in contravention of the Constitution. This decision has been followed in the comparatively recent case of State vs. Howard, 264 Mo. 386, where the indictment was found in a different county than where offense was committed.

Some years later, about 1890, the Supreme Court in State vs. Meyers, 99 Mo. 107, held that unless the indictment *in its conclusion* stated that the grand jurors, *upon their oaths, charged* that the defendant did kill and murder the deceased, it was defective. And the court points out that without such conclusion, the previous words in the indictment charge only manslaughter and then holds that the Statute of Jeofails did not cure the error. This case will be analyzed and criticized in subsequent pages. Its ruling has been followed in a considerable number of cases, among them State vs. Ferguson, 152 Mo. 98; State vs. Sanders, 158 Mo. 610; State vs. Cook, 170 Mo. 210; and in the later cases of State vs. Dawson, 187 Mo. 60, and in State vs. Minor, 193 Mo. 599, its doctrine was extended to informations. The authority of these last cases, however, is much shaken; in fact, they seem to be overruled in State vs. Lee, 259 S. W. 798, decided March 4, 1924, which latter case is cited with apparent approval in State vs. Rennison, 267 S. W. 850.

In State vs. Green, 111 Mo. 585, October, 1892, an indictment for murder in the first degree which alleged that defendant "did shoot off and discharge at and upon said Joseph Beaumont" a certain pistol, "thereby and thus striking the said Joseph Beaumont with said leaden bullet inflicting on and in the forehead of said Joseph B. one mortal wound," it was held that the words, "thereby and by thus striking," indicated that the pleader had previously alleged a "shooting and wounding," when as a matter of fact he had not. And the indictment was held bad. It is difficult to see how any person could read this indictment without understanding that it charged the defendant with shooting Beaumont, thereby inflicting a mortal wound from which he died.

In State vs. Fairlamb, 121 Mo. 137, (1894), an indictment for murder which misspelled the word "weapon" as "neapon," although it stated that the "neapon" was a gun, and misspelled the word "wilfully," by using an "n" instead of a "w," was criticized and held bad because it did not allege a felonious intent, although the indictment charged that the assault had been feloniously made with a "neapon," namely a gun. This case was practically, although not in terms, overruled in State vs. Haskell, 283 Mo. 607.

In State vs. Rector, 126 Mo. 328, defendant was charged with murder in having killed deceased by striking him a hammer,—omitting the word "with," and the indictment was held to be fatally defective. A similar ruling was made in State vs. Ferguson, 157 Mo. 92. The case of State vs. Baird, 248 S. W. 597, (1923), holds that the omission of the word "with" does not invalidate the indictment. And in State vs. Woodward, 191 Mo. 617, (1905), where the indictment alleged that the defendant feloniously "did strike and beat" the deceased at and upon the right side of the head "with the club aforesaid and inflicting and giving to said deceased a mortal wound;" it was held bad because it did not show that the wounding was connected with the felonious assault, since the indictment did not use the words, "then and there," or their equivalent.

On the other hand, some earlier decisions show a marked disposition to disregard unnecessary allegations, and even repugnancies in indictments. Thus in *State vs. Dale, 108 Mo. 205,* about 1892, where the charge was murder, the court held the indictment good, though it omitted the word "premeditatedly," deciding that the word "deliberately" used in the indictment, included all that was embraced in the omitted word.

And the indictment in *State vs. Taylor, 126 Mo. 531,* February 12, 1895, was held good, though it charged that two mortal wounds (in different parts of the body) had been inflicted with one leaden bullet.

The Pemberton Case.

It seems to us that most of these earlier cases cannot be reconciled with those of the more recent period under review, and have been disregarded though not in terms overruled. But there is a conflict among some of the later cases, which we believe, can be explained in part by the fact that in some the facts were so similar to those of certain decided cases that these served as direct precedents, while in others the facts differed sufficiently to warrant the making of a distinction so that these precedents would not control. Several of these older cases which have been frequently cited as precedents and as such caused some unsatisfactory decisions in later cases, seem to us to have not been well considered.

In State vs. Pemberton, 30 Mo. 376, the Supreme Court held an indictment defective which did not repeat in its conclusion the name of the person killed. This case was direct authority for the decision in State vs. Cline, sup., and a number of other cases. And so State vs. Meyers, 99 Mo. 107 has served as a precedent in a large number of cases. Since there has been some misapprehension concerning the former of these cases, and the latter is based upon an erroneous view of the law, we shall now examine them with care.

In this case, decided in 1860, the indictment was in two counts, the first of which entirely omitted the conclusion, "against the peace and dignity of the State," while the second failed in the conclusion to repeat the name of the person killed. The Court held the first count bad because the Constitution required all indictments to conclude with the words quoted, and held the second count bad because of the failure to repeat the name of the deceased. As to the first count there can be no question as to the correctness of the decision.

As to the second the court said that the omission of the word "feloniously" in an indictment for murder had always been held fatal although it was a mere term of art as much so as the word "murder" and its omission had no more tendency to prejudice the accused than the omission of the word "murder." The court also held that the statute of jeofails did not correct the oversight.

It seems that the judge who wrote the opinion had in mind the cases in which it had been held that where an indictment failed in its conclusion to use the word murder that this omission reduced the charge from murder to manslaughter. Granting that these cases were correctly decided, it by no means follows that the omission to repeat in the conclusion the name of the person killed should produce the same effect. The name of the deceased no doubt appeared in the charging part of the indictment and the failure to repeat it in the conclusion could not have prejudiced the accused. It is true the court cites Dean vs. State, 7 Blackf. 20, Indiana (1843), in support of this ruling, but the decision of that court is not supported by the cases (all English) cited therein. Aside from this, the court unfortunately placed a narrow construction upon the statute of jeofails, which at the time of that decision had been amended several times, and expressly provided that no indictment should be deemed invalid "*nor for any other defect or imperfection which does not tend to the prejudice of the rights of the defendant upon the merits.*"

The court stated in its opinion that the Legislature had not undertaken to change the entire system of criminal pleading, and substitute another, but had merely made specific modifications in the ancient forms of proceedings, and that if it had intended to abolish the entire system it would have established a substitute for it. And the court in holding that the statute of jeofails did not abolish the old system uses this language: "To give so liberal and latitudinarian a construction to this clause, would undoubtedly destroy many, if not all, of the forms which have hitherto been observed." While we do not believe the decision in this case finds any support even in the English cases, the point decided is not of great consequence, and prosecuting attorneys can readily meet its requirements. The case has been considered at some length because the view held by some lawyers that the ancient forms of indictment had been preserved and that the legislature had not the power to change them is based partly on this case and in part on Ex parte Slater, 72 Mo. 102. The Pemberton case, however, in direct terms recognizes the power of the Legislature to change the old forms, and Ex parte Slater simply holds that the Constitution preserves the essentials of the common law indictments, and one of these was that it must be found and returned in the county in which the crime is charged to have been committed.

State vs. Meyers, 99 Mo. 107.

In this case which was decided about 1890, an indictment for murder was held bad because it failed in the conclusion to aver that the grand jurors "upon their oaths aforesaid" do say, etc. We believe that this decision is not supported by the cases cited in the opinion, namely, Pemberton's case, Ex parte Slater, and an old English case known as "Heydon's case."

From what has been already said of the Pemberton case, and Ex parte Slater, it is clear that neither is a direct authority on the point decided in the Meyers case. Nor is Heydon's case in which the form of indictment in Latin is set out, part of which is copied in the Meyers case. Heydon's case does not deal with the conclusions of indictments for murder at all, but does hold that the indictment was sufficient though it did not describe the length and depth of the wound inflicted and which it was alleged produced death. The court in the Meyers case, referring to the cases which hold that unless the conclusion states that the defendant did kill and *murder,* it would be regarded as charging the lesser offense of manslaughter, since the word *murder* is necessary to charge murder, then holds that the omission of the words "on their oaths state" from the conclusion also reduces the charge to manslaughter, which would seem to be an obvious non sequitur. Again, if as the court states, the grand jurors make the charge in the conclusion, and the words "upon their oaths state" is an essential part of the conclusion, it would seem to follow that the indictment would be insufficient to charge any offense. But, except as designating the crime charged as "murder" the conclusion is not the charging part of the indictment, but the charging part precedes the conclusion which is merely stated as the legal effect of what is set forth in the charging part.[1] And this is true as to indictment for other offenses as well.[2] It seems to us that the court in the Meyers case attached undue importance to the words "on their oaths say" as a part of the conclusion, for in the beginning of the indictment it is stated that the grand jurors "upon their oaths" present and charge—setting out the facts constituting the crime. Indeed in 1 East C. P. 347, Sec. 117, the conclusion in a murder charge is given as follows: "and so the said A him, the said B in manner and form, and by the means aforesaid, feloniously, wilfully and of his malice aforethought did kill and murder." It will be observed that he entirely omits the words "on their oaths aforesaid." We have considered this case at length and endeavored to point out the error in its decision because it has been so often cited as a precedent and furnished the ground for reversals of subsequent cases.

When it is remembered that the Meyers case was decided as late as 1889, when the conditions which caused the strictness in the observance of every technicality had ceased to exist in England for over a century (and had never existed in this country except in a small degree), one cannot but wonder at this decision. And this wonder increases when one recalls that some 275 years ago a distinguished judge of the King's Bench in England (the court having criminal jurisdiction), after calling attention to the technical requirements of indictments, especially those charging murder; after pointing out that the indictment must be in Latin, that the word "murdravit" (a Latin form of an English word) must be used, and that the law recognized nothing as its equivalent, and also that if it was spelled, or rather, misspelt "murderavit," the indictment was fatally defective; and after having pointed out that the indictment must allege on which side of the body the wound was inflicted, and that if the pleader by error placed it on the right side instead of the left, the mistake was fatal; also, that the wound must be described, but that an error or misdescription was not fatal, and that several of the allegations had been held not essential, and pointing out some subtle distinctions, proceeds to relieve his feelings, by saying that all that he had pointed out cause him to observe—

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[1] Chitty, Crim. Law 76, 1 East Com. Pl. 347, Sec. 117.

[2] Chitty, Criminal Law, 312. Sherwood, Commentaries on Criminal Law of Missouri, p. 400.

> "That in favor of life great strictnesses have been in all times required in points of indictments, and the truth is that it has grown to be a blemish and inconvenience in the law and administration thereof. More offenders escape by the over-easy ear given to exceptions in indictments, than by their own innocence, and in many times gross murders, burglaries, robberies and other heinous and crying offenses escape by these unseemly niceties to the reproach of the law, to the shame of the Government and to the encouragement of villainy and to the dishonor of God. And it were fit that by some law this overgrown curiosity and nicety were reformed which has now become a disease in the law and will, I fear, in time grow mortal without some timely remedy." (2 Hale, Pleas of the Crown, p. 173.)[1]

The substance of this comment has been repeated frequently in our own day, although conditions have improved very considerably due to the fact that our Legislature has endeavored, by the statute of jeofails, to bring about the reforms, the need of which his Lordship so clearly and emphatically pointed out.[2]

Recent Policies.

Although the Pemberton and Meyers cases have strongly influenced the court at times, still candor and fairness require us to say that a study of the decisions of the Supreme Court indicates to us that there has been a very noticeable tendency in recent years, to break through the web of formalities and technicalities and decide criminal cases upon substantial grounds, and the old doctrine that all error is presumed to be prejudicial is rarely referred to. At that, this doctrine is by no means a lion standing in the path of justice. If the error is non-prejudicial, it should not be difficult to make that fact apparent.

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[1] It is interesting to note that Blackstone, after quoting the above words of Hale, remarks, "and yet, notwithstanding this laudable zeal, no man was more tender of life than this truly excellent judge."

[2] With respect to these two cases (Pemberton and Meyers) it may be that the criticisms above offered have never been suggested to the court, or the court may have taken the view that since there have been many sessions of the Legislature since these cases were decided, at none of which the doctrine laid down in them was changed, that these rulings have been acquiesced in and accepted as satisfactory, a view of legislative inaction expressed in the recent case of Ex parte Carey, 267 S. W. 807, Dec. 30, 1924. The reasoning and language of that opinion could more appropriately be applied to the two cases under review than to that case, since there is no question as to what these cases held, while there is doubt that the two cases cited in Ex parte Carey *decided* that persons convicted of crime, except where the punishment was death or imprisonment for life, had the absolute right to bail pending the appeal.

It would perhaps give a fair idea of the attitude of the Supreme Court in recent years, with reference to errors and omissions in indictments and informations and its desire to give effect to the statute of jeofails, to quote the language used by the court in some of the more important recent cases.

> In State vs. Borders, 199 S. W. 180, a murder case, the Supreme Court in 1917 held the information good although it did not state the place where the deceased died, in effect, though not in terms, overruling the case of State vs. Testerman, 68 Mo. 413, and cases there cited. Article II, Section 22, of the Constitution was invoked, but the court said: "The charge must contain a certain description of the crime of which the defendant is accused, and a statement of the facts by which it is constituted, so as to identify the accusation lest the grand jury should find a bill for one offense, and the defendant be put upon his trial for another."
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> "The requirements of the Constitution are, in this respect, nothing more than those of the common law, the only variance from the ancient forms of procedure being such specific modifications as have been authorized by our Statute of Jeofails. These Statutes (Sec. 5107-5115 R. S. 1909) do not authorize the omission from the charge of any substantive fact necessary to be proved to establish the offense in order that the defendant may know the nature and cause of the accusation. But is the place of death, in a case of the character here under review, a substantive fact necessary to be proved to establish the offense? An indictment for murder in the first degree, clothed as in this case in that technical verbiage which is still required as at common law less the circumlocutions and repetitions of the old precedents should contain these essential allegations; that the defendant on the day named, in the jurisdiction in which the charge is preferred inflicted upon the deceased the mortal wounds described, from which the deceased on a day stated died."
>
> The court then argues that the place of death was not a substantive fact, and its averment unnecessary, saying this was in accord with reason and our statute of jeofails, and that regardless of what may have been the rule at common law or may be the rule elsewhere, the omission of this allegation was not considered fatal in this State, the court proceeding:
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> "In the enactment of our Statute of Jeofails, a purpose was evinced to free criminal charges of many of the useless technicalities required at common law. There is a growing disposition on the part of the courts in the wholesome administration of justice, more evident now than heretofore, to discourage reversals unless the error claimed to have been committed deprived the defendant of some substantial right. The indictment did not do this, and defendant's contention is overruled."

Somewhat similar language is found in the opinion in the much earlier case of State vs. Blan, 69 Mo. 321.

In State vs. Ferguson, 212 S. W. 339 (1919), supra, a murder case, it was objected that the prosecuting attorney did not add to his signature the words, "of Greene County," and further that the word, "wilful" was omitted from the information, but the court overruled these objections saying,—

"An indictment for murder, therefore, under our Statutes means just what it did at common law." (Ex parte Slater, 72 Mo. 106; State vs. Meyers, 99 Mo. 116.) "Not only is this conclusion evident from these well reasoned rulings, but we have expressly held that forms of indictment for murder in this State are to be measured by rules of the common law in that behalf prescribed." (Citing State vs. Cline, 264 Mo. 416.) "* * * the words 'with malice aforethought' being of like import but even more intense in their meaning than the word 'wilfully,' the former may reasonably be said to supply the place of the latter. This being true in the omission of the word 'wilfully' the rule is not violated which forbids in criminal pleadings the leaving of any material allegation to intendment or implication, nor is the constitutional requirement infringed which provides that the accused shall be apprised of the nature and cause of the accusation against him."

And in State vs. Webb, 254 Mo. 414, also a case of murder in the first degree, where it was claimed that the fact that deceased received a wound in the head instead of the body, as alleged in the information, was a fatal variance, the court overruled the objection and held that the case was covered by the Statute of Jeofails, quoting from State vs. Anderson, 98 Mo. l. c. 472, as follows:

"The sufficiency of the indictment has been questioned; it alleges that defendant gave the deceased, with the club aforesaid, *one wound on the head and body*. This repugnant allegation, it is claimed, renders the indictment fatally defective. This contention would doubtless have prevailed at common law, but such objections are of no avail under our practice and statutory provisions."

In State vs. Anderson, 250 S. W. 68, a case of manslaughter, the court, after saying that the common law prevails in this state as to the requirements of indictments and informations, and that the Legislature has simplified pleadings to some extent, proceeds:

"The courts of this state, however, have simplified criminal pleadings, as far as it could be *done without legislative authority* under the Constitution and the prevalence of the common law. Where an offence is of statutory origin described by the statute, an information in the language of the statute is sufficient where the statute sets out all the elements constituting the offence."

And in State vs. Flannery, 263 Mo. l. c. 588, where there was an error

> in naming the person alleged to have been killed, the name stated being "Connell" instead of "McConnell." The court said:
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> "Defendant knew the nature of the charge preferred against him, the time and place where it was alleged to have been committed. Possessed of this knowledge, in what respect could he have suffered injury if the complaint had charged him with having struck and killed John Smith instead of Olin McConnell."
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> *"Courts should not lend themselves to subterfuges as defenses to criminal prosecution where not even an intimation of prejudice is made. The time has passed, not only in this State but elsewhere, when pure technicalities, in the absence of evidence of well defined injury to the accused, will be permitted to obstruct the enforcement of the criminal law."*
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> In State vs. Haskell, 284 Mo. 607, the court held that it was proper to amend an information charging forgery, after the jury was sworn, so as to allege that the bank upon which the draft or check was drawn was a corporation, and also that the use of the conjunction "and" for the article "an" in the sentence, "did pass, utter, publish and order," did not vitiate the information, although the use of the word "and" for "an" changed the word "order" to a verb, and, strictly considered, changed the whole meaning of the sentence. The court said, *"While it is true in a criminal charge that nothing must be left to intendment or implication, this rule must be construed as having reference to such allegations as are necessary to inform the defendant of the nature and cause of the accusation against him and not extrinsic matter, the averment of which is unnecessary, and if averred, need not be proven."*
>
> In the earlier cases cited, the rule that the indictment must leave nothing to intendment or implication seems to us to have been construed quite differently than in the case just cited and other recent cases.

There has been an impression among lawyers in this state that our Supreme Court has decided that the Constitution not only preserved the indictments, such as were known at common law, and that informations must conform to the old indictments in substance and form, but that it deprived the Legislature of the right to dispense with technical and formal allegations therein, an impression which a study of the cases will show to be erroneous. Indeed we confidently assert our belief that the Supreme Court would sustain legislative acts, such as are found in Massachusetts and Arkansas, prescribing the forms for indictments for various offenses, provided that they meet the constitutional requirement that the accused would be advised of the nature and cause of the accusation. This legislation has been possible in our sister states having constitutional provisions substantially, if not identically, such as are contained in our Bill of

Rights. Such simple forms of indictment have also been prescribed by statute in Canada, and New Zealand, and as we understand it, by court rules in England. A sample of these simple forms of indictment will be found on page 550. This is the form approved and in use in Arkansas. It may seem advisable for some future Legislature in this state to adopt such forms, since it is unlikely that prosecuting attorneys will be willing to take the chance of having their cases reversed because of defective indictments and informations drawn by them in an attempt at simplification. As giving point to this remark we may call attention to the fact that the Attorney-General of Missouri published, on or about September, 1926, forms of information and indictment which are transcripts of those long in use and approved by the Supreme Court. Incidentally, we may add that while the forms of indictment or information in cases of murder, false pretenses, perjury and embezzlement, at common law and heretofore in use in Missouri have been complicated and lengthy, yet as to most other offenses the forms in use in Missouri are simple and concise and hardly susceptible of greater simplification.

Reversals on Statutory Grounds

The question is frequently asked, "To what extent do statutory provisions impede the prompt and successful administration of criminal justice?" and the question is entitled to serious consideration, but a general discussion of the subject does not come within the scope of this paper. However, so far as the decisions of the Supreme Court show that a statute has been the basis of appeals, and so far as statutes apply directly to proceedings in that court, they have a proper place in this study.

Table III shows that sixteen of the total of 325 cases reversed were reversed because the cross-examination of defendant (or his wife) had gone beyond the matters brought out in direct examination, which violated R. S. Mo. 1919, Section 4036. In addition to these, there were a large number of cases in which it was held that the statute had not been violated, and some in which it was held that this section had been violated but that there was no ground for reversal as nothing prejudicial to defendant had been brought out. In the nature of things, this statute is the cause of many difficult questions, as it is by no means easy to decide precisely what grows out of the direct examination and what goes beyond it. If this statute were amended to extend the right of cross-examination, it might avoid many of these difficult questions.

Another statute, whose violation has caused some reversals (not many, for prosecuting attorneys are entirely familiar with it), is the statute forbidding any reference being made to the failure of defendant to testify. The original statute, (Acts of 1877, 5350) permitting the defendant to testify, also provided that his failure to do so should not be commented upon; and this feature is also found in the English Statute. Indeed, it is found in the statutes of a majority of the American states.

The statute known as R. S. Mo. 1919, Sec. 4025, has given rise to a contrariety of opinion among the judges and to decisions which can not be reconciled. As it first appeared (in R. S. 1879) the section merely required that "the court must instruct the jury in writing upon all questions of law arising in the cases which are necessary for their information in giving their verdict." This statute in its language is peremptory. It says that "the court must instruct the jury," but even before it was enacted, the Supreme Court had held that it was the duty of the trial court to instruct the jury on the essential elements of the crime charged.[1]

Another statute may properly be noticed as directly affecting the appellate courts, namely, R. S. 1919, Section 4107, which gives defendants in felony cases a full year in which to perfect their appeals to the Supreme Court. This puts it in the power of the defendants in felony cases, to delay the hearing of their appeals in the Supreme Court for a year, and in many cases considerably more than a year. We feel safe in saying that this statute should be amended and defendants required to perfect their appeals in felony cases within three months. The bill introduced in the Legislature of 1925 sought to remedy this, but unfortunately this provision of the bill was not adopted.

The Course of Legislation

A brief statement of the growth of the statute law with reference to criminal procedure will not only be interesting, but may aid in forming a just opinion as to the attitude of the legislative branch of the government.

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[1] State vs. Kilgore, 70 Mo. 546.
State vs. Brandstetter, 65 Mo. 149.
State vs. Matthews, 20 Mo. 55.

In the first of these three cases, the court drew a distinction between the issues in the case and collateral matters, holding that the court was required to instruct as to the former as a matter of duty, but as to the latter only if requested to do so. The reason for such holding is not hard to find. The jury must determine the question of defendant's guilt and also his punishment, and so the court in the very nature of things must give the jury a general instruction, telling what are the elements of the crime charged and also advising them as to the punishment. And courts have always given such general instruction as a matter of necessity and duty. Recent cases which give full effect to the provisions of this statute are:

State vs. Good, 220 S. W. 854.
State vs. Conway, 241 S. W. 271.
State vs. Bunnill, 252 S. W. 709.
State vs. Jackson, 267 S. W. 855.
State vs. Turnbo, 267 S. W. 847.

The Constitution of 1820 gave to defendants the right to defend in person and by counsel; to compel the attendance of witnesses; to demand the nature and cause of the accusation; to meet the witnesses against him face to face; he was protected from being put in jeopardy a second time for the same offense; need not give evidence against himself; excessive bail must not be required, nor cruel and unusual punishment inflicted. And the Constitution provided that indictable offenses could not be prosecuted by information; and it is worth noting that the first Constitution required all indictments to conclude with the words, "against the peace and dignity of the State," which is retained in the present Constitution.

The Legislature in 1825, intending no doubt to carry out the spirit of the Constitution, as understood by it, passed a number of laws regarding criminal procedure. It abolished benefit of clergy, appeals for felony (original proceedings, not appeals to a higher court); it provided that a civil remedy should not be merged in a crime; that in treason or felony cases, it should not be necessary to ask the accused, how he would be tried; that if he stood mute, a plea of not guilty should be entered for him; that one accused of a capital offense should be furnished with a copy of the indictment, and a list of the jury, two full days before the day of trial; and the statutes further provided that where a defendant was arraigned for crimes, punishable by death or imprisonment for life, he should have twenty peremptory challenges, and in lesser offenses ten, while none was allowed the state, and the statute provided that continuances and a new trial could be granted as in civil cases.

The Constitution preserved indictments as the means of instituting criminal proceedings, and the Legislature could not, of course, do away with what the fundamental law required. But it did attempt to simplify the indictment and provided for the amendment not only of the indictments, but other proceedings up to the swearing of the jury.[1]

These early legislators are entitled to much credit for their broad and sane views respecting the rights of persons accused of crime, and also their wish as indicated by the statute quoted to prevent merely formal defects in indictments to stand in the way of justice.

The statutes said nothing about the allowance of bills of exceptions in criminal cases, and the Supreme Court in State vs. Mitchell, 3 Mo. 201, held that in a felony case a defendant was not entitled as a matter of right to a bill of exceptions. Without a bill of exceptions to preserve the evidence and the rulings of the court in the course of the trial, the defendant who had the right to sue out a writ of error, could only get the record proper before the appellate court, *i.e.*, the indictment, record of arraignment, plea, verdict, judgment, etc. So our appellate court having only the bare record before it, could grant a new trial by reversing the case only upon some error appearing in the face of the record.

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[1] "Section 24: That hereafter no indictment shall be quashed or set aside for want of the words 'with force and arms,' *or any such words*, and indictments and proceedings in criminal cases may be amended in point of form, at any time before the jury are sworn for the trial of the cause."

The Legislature remedied the situation by providing that defendant should have the right to a bill of exceptions in all felony cases.[1] This placed him in a position to bring the evidence in his case before the Supreme Court. At common law the accused was not permitted to testify and it was not until 1877 that this right was given him by our statute. He was now able not only to present his defense fully to the trial court, but also to bring up the complete case to the Supreme Court for review.

Having safeguarded the interests of the defendant by securing him a fair trial upon the merits of his case and the right of a review of the whole case on appeal, the Legislature from time to time properly enough amended the first statute of jeofails passed 1825, and greatly extended its operation. The action of the successive legislatures in amending and broadening this beneficient statute is convincing evidence that the law-making body was responsive to the general public sentiment in favor of having criminal cases tried upon their merits, with only such regard for form and procedure as fairness and substantial justice required. The very proviso at the conclusion of the statute as it first appeared in 1879,—"Provided that nothing herein shall be so construed as to render valid any indictment which does not fully inform defendant of the offense of which he stands charged."—is convincing proof of the legislative purpose to require of indictments and informations merely that they shall fairly advise the defendant of the crime of which he is charged and of the essential facts upon which the charge is based.

A generous tribute to the work of these early legislators may be found in the opinion of the Supreme Court in State vs. O'Kelley, 258 Mo. 345. In fact, there are two splendid opinions in that case; one by Commissioner Roy, the other by Judge Faris, in which the changes wrought by our statutes are clearly pointed out. While according the Legislature due credit for much of its work, the fact remains that it has gone too far in its desire to protect the accused and passed quite a number of acts which hamper the courts in the administration of justice in criminal cases, some of which have been referred to in preceding pages, a consideration of the majority of which however is not within the scope of this paper, since they have not directly influenced the decisions of the Supreme Court. Efforts to have these statutes amended and to secure needed additional statutes have been unsuccessful.

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[1] See R. S. Mo. 1855, p. 1193, Secs. 26 and 27.

In this connection attention must be called to the bill introduced in the Legislature of 1925, some parts of which were enacted into law, while other parts were changed or entirely eliminated. This proposed law, (Senate Bill No. 91) was introduced by Senator Hollingsworth of Audrain County. It contained a number of provisions which were merely declaratory of the law as had been decided by the Supreme Court, and these were enacted into law. It also contained a number of other provisions calculated to remove some of the handicaps resting upon the state in prosecuting criminal cases, and these were with few exceptions defeated.

Beginning with the famous Pemberton case, the Supreme Court had in a number of cases pointed out that the Legislature had not seen fit to enact a law providing that indictments need not follow the forms or phraseology required in the precedents of the common law, but need only charge the offense in concise and ordinary language and state facts sufficient to inform the accused of the nature and cause of the accusation. Section 3908a of the proposed law was evidently intended to meet the point made by the court. This section was, however, stricken from the bill.

It may be that the law makers considered it unnecessary to adopt this section in view of the language of the Supreme Court in State vs. Haskell, 284 Mo. 607, heretofore quoted, or it may be that some objection was found to the phraseology of the proposed section. While we believe it would have been wise to have enacted this section of the bill into law, it is our opinion that under the existing statutes as construed by the Supreme Court, the forms of indictment heretofore used in cases of murder, perjury, false pretenses, and perhaps one or two other cases in which rather complicated forms have been in use, could be greatly simplified.

Cases Decided on Technical Grounds

The critic who condemns the courts most severely for "technical" decisions usually has in mind decisions which result in the reversal of convictions for crime and does not realize that the state is not the sole sufferer from "technicalities." Defendants, too, often have cause to feel that substantial justice has been denied them because of the enforcement of some rule, adopted for practical reasons or based upon some statute.

We have indicated that of 1087 criminal cases appealed to the Supreme Court 342 were dismissed without a hearing because of the failure of the defendant to take some step required by the statute or rule of court. At common law a defendant in a criminal case had no right of appeal and the statutes giving him that right make it dependent upon his complying with certain conditions. Should he fail to comply with any of these conditions, he loses his right to appeal.

We have already pointed out that one of the statutes which has caused the most delay and has very much to do with the difficulty in securing conviction upon a second trial, is the one which gives the defendant a full year in which to perfect his appeal. It would be a very serious matter if he could take his own time about bringing his case before the Supreme Court.

Again, the law requires an unsuccessful litigant, whether in a civil or criminal case, to present a motion for a new trial to the trial court, pointing out wherein the court erred to his prejudice, so that the court may correct its own error, if it believes it committed error prejudicial to the losing party, and so make an appeal unnecessary; and the courts have always, consistently and properly, held that failing to file a motion for a new trial, the appellant can raise only such objections as appear from an examination of the record proper, and appellants have frequently lost their cases on appeal because of such failure.

Now, for some reason, satisfactory to the Legislature (probably because the duty is cast upon the Supreme Court to examine the record), the statute respecting the contents of a motion for a new trial is more exacting in its requirements in criminal than in civil cases.

The statute as to criminal cases provides that the motion for a new trial "must set forth the grounds or causes therefor." The court has therefore required motions for new trials in criminal cases to specify the grounds of objection, *i.e.*, point out what evidence was objected to, the grounds of the objection, and the ruling which is claimed to be error, and to specify the instructions objected to that were given, and specify what instructions were not given, but should have been given; whereas, in civil cases, the motion for new trial may state generally that the court erred in admitting or excluding evidence, or in giving or refusing instructions. Here is a distinction, apparently technical, but based upon a statute, which operates very decidedly against the appealing defendant in a criminal case.

The history of this act may be found in State vs. Rowe, 196 S. W. 7, (1917). There are many cases in which the court has held appealing defendants to a strict compliance with this statute, among the more recent being State vs. Stevens, 220 S. W. l. c. 847; State vs. Daugherty, 228 S. W. 786.

The statute provides that in all criminal cases properly appealed, the courts shall examine the record and give judgment thereon. This is a very old statute, first appearing in 1835, and the court might have held that this statute had reference to the record proper, but it has placed a more liberal construction upon the statute, and, at the cost of much labor to itself, examined the entire record, including all of the evidence, especially in cases where defendant was not represented by counsel in the upper court, to satisfy itself that he had received a fair trial and that the conviction was warranted by the law and the evidence. On the other hand, the court has uniformly held that this statute has reference to "such a record" of the trial as is required by its rules of procedure to be preserved for its review, the court thus giving effect to two statutes, the terms of which were such as required judicial construction.

The Supreme Court has fully realized that in enforcing some of the rules referred to, the defendants, for apparently technical reasons, have been really denied a hearing of their cases or of some questions they would like to raise upon appeal, and has been somewhat sensitive about criticism of reversals for technical reasons, for in deciding that the objection made to the cross-examination of a defendant in the trial court was not sufficient to preserve the point for review, it said:

> "It needs no reiteration of cited cases to show the utter insufficiency of such an objection. So we disallow the general assignment of error within which this point falls and place it in that "*large* category of cases" rarely mentioned by the press or populace, but nevertheless numerous, in which the State is saved a reversal by a technicality." (State vs. Bouslog, 266 Mo. l. c. 81.)

In another case, the Supreme Court said:

> "We have gone with much care and pains over this record with a view to reverse and remand it, if any sufficient legal excuse to that end could be found since upon the whole case defendant did not have a fair trial. But we have been utterly unable to find such legal excuse. For those things which would have been error, if properly preserved, cannot be considered and reviewed by us because they are

> not correctly saved. So finding no error which we can review under the law, we are constrained to order it affirmed, which accordingly we do." (State vs. Baker, 264 Mo. l. c. 357.)

This language was used in a case where a man was sentenced to three years in the penitentiary for stealing four goslings and the court in its opinion stated that the record "bristled with errors" and was filled with things which utterly disregarded the rights of the defendant. Because these matters were not objected to and excepted to at the time, the court held, and no doubt correctly, that they were not subject to review.

This case is an extreme one, however, so extreme that one cannot but feel that the court might well have made an exception and reversed the lower court and ordered a new trial in the interest of substantial justice. If precedents were necessary to justify such action they could be found in the following cases in which the court held that verdict resulting from prejudice on the part of the jury should not be permitted to stand: State vs. Webb, 254 Mo. l. c. 434; State vs. Prendible, 165 Mo. 329; State vs. Spivey, 191 Mo. l. c. 112.

Of course the prejudice must have been the result of some action or circumstance for which defendant was not responsible, as where counsel for the State asked improper questions, the mere asking of which would create a prejudice in the minds of the jury, notwithstanding the action of the court in sustaining objections to them. It might be said that defendant's counsel should have asked the court to rebuke the prosecuting attorney, and if that were not sufficient, make this misconduct one of the grounds of the motion for a new trial. Then if the trial court overruled the motion the point would be saved. However the Supreme Court has very properly frowned upon such conduct of prosecutors and has set aside some verdicts even where defendant has not taken all the steps necessary to save the point.

Delays of Justice

Much has been spoken and written about the delays of justice—particularly in criminal cases, and the serious consequences to the state of such delays. That continuances of cases and delays in bringing them to a final determination almost invariably work to the advantage of the accused is palpably true.

It is, therefore, important to know whether, and if so, to what extent, the Supreme Court contributes to such delays. Table IV not only absolves the court from criticism on that score, but discloses the fact that the average time elapsing between the argument of criminal cases and the handing down of the opinion is one month and 27 days. While this is the average time, and in some cases the opinions have not followed for a much longer time, due no doubt to difficult questions presented, the facts disclosed by this table are not only an eloquent testimonial to the industry of the court, but must be a gratifying revelation to the public.

TABLE IV

Average Time Elapsing	1915		1916		1917		1918		1919	
	Mo.	Da.	Mo.	Da.	Mo.	Da.	Mo.	Da.	Mo.	Da.
Crime committed to date information was filed	4	15	3	24	3	1	3	24	5	14
Information filed to disposition by circuit court	5	25	4	20	5	14	6	25	4	22
Disposition by circuit court to appeal perfected	6	11	6	14	4	27	6	6	7	8
Appeal perfected to hearing by Supreme Court	5	15	6	3	7	9	5	23	5	8
Hearing by Supreme Court to disposition Supreme Court	2	7	1	29	1	19	2	12	1	22
Crime committed to disposition Supreme Court	23	26	22	11	23	10	26	6	25	28

Average Time Elapsing	1920		1921		1922		1923		1924		10 Yr. Period	
	Mo.	Da.	Mo.	Da.	Mo.	Da.	Mo.	Da.	Mo.	Da.	Mo.	Da.
Crime committed to date information was filed	5	6	2	22	2	25	4	15	3	2	3	27
Information filed to disposition by circuit court	6	8	7	25	6	2	5	28	5	18	5	27
Disposition by circuit court to appeal perfected	7	28	9	13	8	4	9	8	7	29	7	19
Appeal perfected to hearing by Supreme Court	5	7	5	13	5	21	5	11	4	28	5	16
Hearing by Supreme Court to disposition Supreme Court	1	26	1	6	2	4	1	20	2	0	1	27
Crime committed to disposition Supreme Court	26	29	25	27	23	25	26	7	24	14	24	27

"TECHNICALITIES" AND THE SUPREME COURT

In conclusion, something should be said on the subject of technicalities. As has been well said, science is merely "classified knowledge," that is, knowledge classified upon a rational basis. Classification means differentiation, and science differentiates and distinguishes between objects, processes and methods. The law is a science. It must make distinctions and in the nature of things must therefore be technical. For instance, robbery and larceny are two very distinct crimes, although both involve the taking of another's property, but the former consists in taking it from the owner's person by violence or by putting him in fear, while the latter lacks this element. Clearly, it is a more serious crime to rob a man at the point of a revolver, perhaps murdering him if he resists, than simply to take his property in his absence. Here is a distinction made with good reason between offenses that are different. Now it is perfectly clear and also just, that a man who is to be tried for a crime should be properly notified of the crime with which he is charged so that he may be able to prepare his defense. If he is charged with robbery, he clearly should not be tried for rape, nor for any offense except robbery or some lower degree of that crime. In these cases distinctions are clear. In many other cases, however, the distinctions are not so clear and yet a line must be drawn. The more difficult and finer the distinction, the greater the danger of the undiscriminating condemning the courts for mere quibbling. Sometimes the refinements are carried so far that it is difficult to detect any difference upon which distinctions are based. But the law should not be singled out for criticism, because in all science distinctions must be made and the law is by no means the least complicated of sciences.

From the review of the many cases cited and quoted from in the preceding pages, we think the conclusion is fully warranted that the Supreme Court of this state has in recent years shown a different and less favorable attitude toward merely technical objections than even in the latter part of the last century. Of course the statute of jeofails has been amended from time to time and its effect broadened, but aside from that, it seems that the decisions of the court and the language of the judges used in different cases show a decided inclination to consider cases on appeal upon their substantial merits and not to grant new trials unless some error has been committed in the trial court which actually was prejudicial to the defendant's rights or prevented his having a fair trial. And strong proof of this tendency is the frequency with which the statute of jeofails has been invoked by the court in recent years.

While it is true that our law of criminal procedure is by no means all that could be desired, and that it is still in some respects archaic and cumbersome, substantial progress has nevertheless been made. The Legislature has shown a decided disposition to free the law from the merely formal and unessential, and bring about a situation in which cases may be decided upon their substantial merits, and the Supreme Court, certainly in recent years, has shown a marked desire to give full effect to such legislation.

The general impression is that the number of cases sent back for retrial by the Supreme Court is very large. We have seen from the tables prepared and attached hereto that of the cases decided by that court upon argument 43.6% were remanded for another trial. But to get a fair idea of the effect of these decisions upon the enforcement of the criminal law in this state, one should know what percentage of criminal cases brought into our trial court reaches the

Supreme Court. Without having the statistics for the entire state at hand, we can say that the figures for the City of St. Louis show as to the disposition of criminal cases in the Circuit Court, between October, 1923, and October, 1924,—that of the 1492 cases in which warrants were issued 492 were disposed of on preliminary hearing, by the action of the Grand Jury, or by transfer of cases to other courts. Of the 1000 cases reaching the Circuit Court for disposition, 102 were disposed of by nolle pros., and of 119, some were disposed of by being dismissed for failure to prosecute, some by the indictments being quashed, while a considerable number were still undisposed of and remaining on the docket.

In 585 cases, or 58½% of the 1000 coming into the courts the defendants pleaded guilty. 111, or 11.1% were convicted; and 83, or 8.3% were acquitted. Considering only the cases tried, the convictions were 57% and the acquittals 43%. Of the total convictions, over 80% were on pleas of guilty. Of the total of 111 convictions, appeals were taken in only twenty-seven cases, so that if the proportion of dismissals in the Supreme Court holds good (33-1/3%), then only eighteen cases out of the one thousand coming to the circuit court for disposition were passed upon by the Supreme Court and in a majority of these the convictions were upheld. However, the fact that but few of the criminal cases tried in the circuit courts ever reach the Supreme Court does not detract from the importance of the decisions of that court nor reduce the consequences of its rulings, for it must be remembered that the trial courts are required to follow the rulings of the Supreme Court and the decisions of the upper court reversing cases upon overly technical grounds are the bases of the decisions of many more cases by the trial courts where the same or similar questions are presented, and where acquittals follow the State has no right of appeal.

We say this because we do not wish to give the impression that the comparatively small number of criminal cases reaching the Supreme Court decreases its responsibility to base its decisions upon broad and correct principles of law, the application of which will result in the protection of society on the one hand, while on the other, securing to every citizen accused of crime a fair and impartial trial, for society and the citizens both have rights which it is the function and duty of the courts to protect under the law.

CONCLUSIONS

This review and study have enabled us to draw a number of conclusions, some of which we state with a feeling of certainty, others guardedly.

1. Indictments—With relation to the decisions upon the sufficiency of indictments, the percentage of cases reversed and remanded because of defective indictments (28 cases out of a total of 745, less than 4% of all the cases decided by that court) shows a much smaller number of cases remanded for a new trial for this cause, than was generally supposed.

In six of these twenty-eight cases, the rulings have been very technical. In three of these six, however, the court clearly followed its own established precedents, while in the others precedents were cited which were not so apposite. Considering the number of cases in which indictments have been held sufficient, we believe the conclusion warranted that the tendency of the decisions in recent years has been, and is, to disregard the merely formal in indictments, and to look only to matters affecting the substantial rights of defendants.

The decisions of the Supreme Court warrant the conclusion that statutes would be held constitutional which provided that indictments and informations need not be drawn in the language of common law precedents, but need only state the essential facts constituting the offense charged, with enough of detail to inform the defendant of the nature and cause of the accusation. The forms themselves might be prescribed by statute, provided, of course, they meet the requirement of the Constitution that they advise the accused of the nature and cause of the accusation.

2. Constitutional provisions—We find no provision in the Constitution of Missouri, except that which requires an unanimous verdict in criminal cases, and the one which excuses a person from testifying against himself, which in anywise hampers the administration of the criminal law.

As to the former, an amendment permitting not less than ten jurors to find a verdict in a criminal case except where punishment is death or life imprisonment, would result in a number of convictions where we now have acquittals or divided juries, and we recommend the submission of such an amendment to the voters of the state.

3. Statutes—The statute giving the defendants a full year in which to perfect their appeals should be amended, and the time reduced to three months.

The statute relating to instructions in criminal cases should be amended to require the defendant's counsel to point out any errors in the form or substance of the instructions immediately after the court has read them to the jury. It should also be made clear that the statutory provision that the court, without being requested, shall instruct the jury upon all necessary questions of law arising in the case, has reference only to what constitutes the essential elements of the crime and its punishment, and the defenses attempted to be proven by the evidence, and does not include merely incidental questions, and that as to such, counsel for defendant must request any instructions desired.

The Supreme Court has often called attention to the fact that the Legislature has not provided that indictments and informations need only set forth in plain and concise language the facts constituting the crime charged, without repetition or merely formal allegations. It would be well if the Legislature were to adopt such a provision as that contained in the Hollingsworth Bill introduced in 1925, and also statutes prescribing the form of indictments in murder, perjury, embezzlement, fraudulent pretenses, and perhaps a few other offenses.

The statute which takes from trial judges the right to sum up or comment on the evidence, deprives them of a right which cautiously exercised would greatly further the cause of justice.

It is unfortunate that the Supreme Court in its anxiety to give effect to the spirit of this law, should have gone to the lengths shown by the cases referred to in holding that instructions contained comments on the evidence.

4. "Technicalities"—The attitude of the court has in recent years tended to disregard technical objections wherever the record shows that defendant has had a fair trial and substantial justice has been done. The decisions can not all be reconciled with each other, but some explanation for the lack of harmony may be found in peculiar facts existing in some of these cases, and to the influence of precedents.

5. Delays—The average time elapsing between the date the appeal is perfected and the arguing of the case in the Supreme Court is 5 months and 16 days, and the average time between the argument and the opinion is 1 month and 27 days. This is not excessive. In fact the time between the argument and the opinion shows decidedly quick action, when it is considered that the court is required by law to examine the record in these cases and to file written opinions. It should also be remembered that the court hears civil appeals and applications of various kinds as well, in addition to sitting "en banc" with Division 1 from time to time.

PART VII

A STATISTICAL INTERPRETATION OF THE CRIMINAL PROCESS

By

C. E. GEHLKE, Ph.D.
Department of Sociology, Western Reserve University
Formerly Statistician Cleveland Foundation

ADVISORY COMMITTEE

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A STATISTICAL INTERPRETATION OF THE CRIMINAL PROCESS

The subject matter of this chapter is an analysis of the statistical data collected with the aim of presenting a truthful picture of the average operation of the criminal courts in Missouri. What knowledge the general public has on this subject is limited to vague memories of cases exceptional enough to claim the attention of the newspapers of the state. Such exceptional cases give in general a wholly false impression of the great mass of judicial operations in criminal cases. It is only when a sufficiently large number of cases is passed in review that we can get an adequate understanding of the subject.

To this end 10,516 felony cases were investigated by the following method:

A schedule was prepared which called for specific information upon all the facts regarded as essential to a clear understanding of the operation of the courts and other agencies in each case. These schedules were filled out by investigators who went into each community in which the data were to be collected.[1]

The communities chosen were selected upon the principle that they should be representative of the entire State of Missouri. The City of St. Louis, Jackson County (containing Kansas City), Buchanan County (containing St. Joseph) are the most urban units studied. In addition one county in each of 34 circuit court districts and two counties from another district of the state were selected. This gives us then a thoroughly representative group, ranging from St. Louis City, which is one hundred percent urban, to certain counties (like Wright) in which there is no town larger than 600. Geographically this secures an even distribution, so that counties of different historical backgrounds are included. Much emphasis is placed on the distinction between urban and rural, since it is a frequently voiced opinion that our judicial procedure, which grew up in a rural society, is breaking down in the new and radically different environment of the modern city.

For the three urban units the cases were (except for liquor cases) all the felony cases in the circuit courts from October 1, 1923, to October 1, 1924; for the 36 counties all felony cases from October

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[1] Copies of these schedules will be found on pages 537-538-539.

1, 1922, to October 1, 1924. These cases are about equally divided between the three urban and the 36 "rural" counties. "Urban" means, when applied by the U. S. census to a population, "living in an incorporated place of 2,500 inhabitants or more." The grouping of these cities and counties is as follows: We shall refer to St. Louis City (100.0 percent urban), Jackson County (including Kansas City; 91.4 percent urban), Buchanan County (including St. Joseph; 83.2 percent urban) as "cities." All the other counties will be referred to as "rural" or called "country" or, simply, "counties." They are grouped according to the percentage of their population that was "urban" in 1920. A list of these "rural" counties follows:

Classification of 36 Counties by the Proportion of Population Living in Urban Territory

(U. S. Census of 1920)

60.0–69.9

Marion
Jasper

50.0–59.9

Cole
Greene
Pettis

40.0–49.9

Randolph
Linn

30.0–39.9

Adair
Grundy
Clay
St. Louis
Saline
Jefferson
Cape Girardeau
Butler
Boone
St. Charles
Livingston

20.0–29.9

Audrain
Vernon
St. Francois
Henry
Cooper

10.0–19.9

Macon
Nodaway
Johnson
Howell
Dunklin
Newton
Franklin
Pemiscot

0.0– 9.9

Holt
Wright
Phelps
Douglas
Scotland

Statistical Methods

The statistical methods used in this survey are very simple. They consist almost wholly of (a) the tabulation of the data given on the questionnaires, *i.e.* the summary of the facts in classes and groups; and (b) the reduction of the figures of these tables to percentages in order to give a fair idea of their relative size. In every case percentages are calculated to the second place of decimals. This is done, not to secure a higher degree of accuracy (which it does not), but to make it possible for the curious reader who would like to reconstruct the original tables of numbers to do so by simply multiplying the basis of the percentages by the percentages themselves. This will give (taken to the nearest unit) the original numbers of which the need for economy of space has caused the omission. There are a few more complicated statistical procedures, which will be described where used.[1]

THE OBJECTS OF INQUIRY

Nothing is more confusing, even to the reader familiar with statistical material, than a multiplicity of numbers—even though these be the representatives and summary of a very much larger mass of numbers. It seems wise, therefore, to give a brief introductory view of the subject matter; to indicate the topography of the forest, before the trees shall have the chance to conceal it. The summary will be made in the form of a series of questions, with indications as to where the answers are to be found.

1st. Of each one hundred cases (excluding liquor cases) for which warrants were issued, what number drop out in preliminary hearing, in the prosecutor's office, in the circuit court? How many are sentenced? Of these, how many escape punishment, and how many are punished? These questions are answered in the discussion of the so-called "mortality tables" of cases. After that each stage of procedure is separately analyzed to discover what forms the "dropping out" takes.

2nd. How important are appeals, retrials, mistrials, and changes of venue?

3rd. How important are jury trials in the disposition of felony cases?

4th. What happens to each 100 liquor cases for which warrants are issued?

5th. Is the kind of charge lodged against the accused correlated with a particular type of sentence?

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[1] *Statistical cautions.* The reader of any statistical study must be on guard against drawing conclusions which are unwarranted either by material or method. One of the commonest dangers is to put too much reliance on the value of averages where the total number of cases is too small. Practically all the data of statistics are sampled data. That is, only a part of all the existing cases are used. The larger the sample of data taken, the more likely is the sample to be representative of the whole group, and the more likely is an average based on the sample to approximate to the average of all the possible cases. In general the reliability of an average increases as the square root of the number of cases, though the number of cases is not the only factor. The second point is that the average of a series of numbers may or may not be representative of the series. For example the average of 1, 2, and 96 is 33. The average of 32, 33 and 34 is also 33. Obviously the second average is more representative than the first. In the case of the percentages in the "Mortality Table" this principle must be kept in mind. There is a wide range in the percentages of individual counties in practically every category of that table, *e. g.* the percentage for all counties of cases finally disposed of in the preliminary hearing is 10.67. But the percentages range from 0.00 in the five least urban counties, to 50.00 in Clay County. For entire state the percentage is 26.08, for Buchanan County (the highest) 60.33.

6th. Does the kind of plea offered by the accused affect the sentence imposed upon him?

7th. Does the type of charge affect the result of the judicial process in its larger aspects—conviction, acquittal, etc.?

8th. How long does it take cases to pass through the several stages of judicial procedure? Is the rate of progress affected by continuances? Is the outcome of the case affected by the length of time it takes to pass through the courts?

These are only the main outlines of the inquiry. The answers they evoke are not always easily interpreted. In fact, but little interpretation is offered in this chapter, which is concerned with a summarization of the important facts revealed by our 10,500 cases.

The Mortality Tables

What These Are Designed to Show.

The routing of felony cases through the judicial machinery of Missouri may be simply presented in the following scheme, which shows that cases at any stage may be concluded there, or go on to the next stage. The words in bold face type indicate dispositions that eliminate the case from further handling; the others the dispositions that carry the case on to the next stage.

- ARRESTED→
- →PROSECUTOR'S OFFICE
  - **Warrant Refused**
  - Warrant Issued→
- →PRELIMINARY HEARING
  - **Discharged, Etc.**
  - Bound Over→
- →PROSECUTOR & GRAND JURY
  - **No Information Filed**
  - **No True Bill**
  - Information Filed →
  - True Bill →
- →CIRCUIT COURT
  - **Acquittal**
  - **Miscellaneous Forms of Discharge**
  - **Nolle Prosequi**
  - Convicted After Jury Trial →
  - Plead Guilty →
- →SENTENCED
  - **Paroled or Appealed**[1]
  - Sentence Executed→
- →FINE OR IMPRISONMENT.

In the mortality table we are primarily interested in the eliminations. We wish to know, first: What is the relative importance of the several stages of procedure in eliminating cases; and, second: within these several stages, what is the relative importance of the various types of eliminations. The term "mortality table" is used because the cases eliminated may be said to have "died." Just as the insurance table of expectation of life is based on the number of persons dying at the several ages, so we may think of this "mortality table" as showing the "expectation of life" of a case, in this way, that the percentage surviving any phase of procedure is like the percentage of human beings surviving any given age. That is just another way of stating the probability of survival. A child at birth may expect (on the average) to live to be, say, 51.27 years old; that is, the chances are even that it will reach that age. So the chances of a felony case in Missouri reaching the stage of execution of sentence is 7 to 3; for of one hundred cases in which warrants are issued, approximately 70 (exactly 68.26) will have been eliminated, and approximately 30 (exactly 31.74) will be punished. To put this in a more personal way, our figures show that a man upon entering the preliminary hearing as a defendant in a felony case would be justified (in the long run) in betting 7 to 3 that he would not be punished for the offense of which he is accused.

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[1] Appeals stop the case only when they lead to reversal by the Supreme Court.

How These Tables Are Constructed.

Tables IA and IB are identical in substance, and differ only in that IA gives the absolute numbers, and IB the percentages which these numbers are of the total number of warrants issued.[1] The main subdivisions—lettered A, B, C, etc., are:

A	Warrants issued	7032
B	Preliminary hearing	5919
C	Grand jury & circuit or prosecuting attorney	5198
D	To circuit court	4969
E	Sentenced but sentence not yet executed	2680
F	Sentence executed	2232

The number of warrants issued does not equal the number of cases taken to the preliminary hearing because 1113 cases (see Table II, second item, first column) are taken directly to the circuit court, and do not enter the preliminary hearing. The numbers given here represent then the cases surviving into the several stages of procedure. Under B, C, D, E, are the headings of the various sub-types of elimination, and in each case the heading "total" includes all eliminations in that particular stage. The main points of each table are then the numbers (or percentages) entering each stage, and the totals of elimination in each stage.

Tables IA and IB give a broad view of the whole judicial process. They are followed by Tables II-VI in which the several stages are separately analyzed. This analysis takes the form of reducing the number of different dispositions within each stage to percentages of the number of cases entering that stage. This gives a fairer basis of comparison of (*e. g.*) stage B in St. Louis with Stage B in Jackson County, since there are unequal proportions of cases in which war-

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[1] In every table in which percentages are used the base of the percentages, *i.e.* the number which is one hundred percent is clearly indicated, either in the title of the table or in the body of it.

TABLE 1A—"MORTALITY TABLE"

Number of Cases Eliminated in the Several Stages of Procedure

	Total for State				Total Three Urban Counties	Total Thirty-six Counties	Counties grouped according to percentage of population living in incorporated places of 2500 or more.						
		St. Louis City	Jackson County	Buchanan County			60.0-69.9 2 Counties	50.0-59.9 3 Counties	40.0-49.9 2 Counties	30.0-39.9 11 Counties	20.0-29.9 5 Counties	10.0-19.9 8 Counties	0.0-9.9 5 Counties
A. Warrants issued	7032	1492	1697	300	3489	3543	472	442	166	1223	342	728	170
B. Preliminary Hearing													
1. Discharged	574	119	257	54	430	144	11	12	10	94	5	12	
2. Disposed of as misdemeanor	195	110	23	30	163	32	8	4	1	18	1		
3. Dismissed for want of pros.	689	22	515	65	602	87	11	12		52	5	7	
4. Nolle prosequi	182	85	8	18	111	71	16	23	1	17	11	3	
5. Other dispositions	194	81	55	14	150	44	9	12	1	14	3	5	
6. Total	1834	417	858	181	1456	378	55	63	13	195	25	27	
C. To Grand Jury and Circ. or Pros. Attorney	5198	1075	839	119	2033	3165	417	379	153	1028	317	701	170
1. No true bill	9	6			6	3						3	
2. No information issued	220	69	35		104	116	5	11	10	16	4	63	7
3. Total	229	75	35		110	119	5	11	10	16	4	66	7
D. To Circuit Court	4969	1000	804	119	1923	3046	412	368	143	1012	313	635	163
1. Nolle prosequi	1106	102	271	32	405	701	141	84	33	236	60	103	44
2. Disposed of on action of court	251	37	9	17	63	188	13	6	2	43	29	80	15
3. Tried and acquitted	323	83	49	4	136	187	20	23	9	54	13	55	13
4. Other dispositions	609	82	77	2	161	448	33	69	34	145	28	111	28
5. Total	2289	304	406	55	765	1524	207	182	78	478	130	349	100
E. Sentence Imposed	2680	696	398	64	1158	1522	205	186	65	534	183	286	63
1. Paroled	344	34	35	8	77	267	38	15	12	110	26	47	19
2. Appealed	93	27	10	4	41	52	5	8	3	15	6	15	
3. Other dispositions	11	5	6		11								
4. Total	448	66	51	12	129	319	43	23	15	125	32	62	19
F. Sentence Executed	2232	630	347	52	1029	1203	162	163	50	409	151	224	44

rants are issued entering the preliminary hearings in these two jurisdictions.

The reader's attention should be called to the fact that these tables are lacking in completeness in one respect. To give a finished picture of the relation of judicial procedure to crime, we should have as a grand total the entire number of crimes committed. The next item would be the entire number of arrests for these crimes. As a matter of fact, only in St. Louis and Jackson County do we have the data for arrests in an adequate form. In order therefore to secure a sound basis of statewide comparison, we must start with "warrants issued" as a base. In the text will be found discussions of St. Louis and Jackson County in which total arrests are used as a basis. Total crimes are not used, however, because the number reported, and the dates of their occurrences are not usually accurate, at least not sufficiently so to fit into our present calculations.

The summary of the basic mortality table is found in Table IB.[1] This shows in compact form just what proportion of all cases entering the machine of justice is eliminated by each of the main parts of the machine. These parts are (1) the preliminary hearing, (2) the grand jury and the office of the prosecuting or circuit attorney, (3) the circuit court in its trial function, and (4) the circuit court in its function of modifying the sentence, or of postponing its execution as a result of the possible action of the Supreme Court. Each of these will be considered in order.

Preliminary Hearing—General Analysis.

The preliminary hearing, taking the state as a whole, eliminates slightly over one-fourth of all the cases, (26.08 percent); in the cities it accounts for slightly over four-tenths (41.73 percent); in the country districts slightly over one-tenth (10.67 percent). Comparing the cities with one another, we note a wide divergence between St. Louis on the one hand, and Jackson County and Buchanan County on the other. In the rural counties those having the larger percentages of urban population show a distinctly higher proportion eliminated in this stage, and in the counties less than 30% urban the use of the preliminary hearing decreases as the "urbanness" decreases.

The Grand Jury and the Prosecutor—General Analysis.

The Grand Jury plays a negligible role in elimination. Only nine cases, six of them in St. Louis, disappear because of the refusal of the Grand Jury to return a true bill. The prosecuting or circuit attorney, by refusing to issue informations, eliminates 3.13 percent

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[1] Until specifically introduced in the discussion liquor cases are omitted from tables and text.

TABLE 1B—"MORTALITY TABLE"
PERCENTAGE OF CASES ELIMINATED IN THE SEVERAL STAGES OF PROCEDURE

	Total State				Total Three Urban Counties	Total Thirty-Six Counties	Counties grouped according to percentage of population living in incorporated places of 2500 or more.						
		St. Louis City	Jackson County	Buchanan County			60.0–69.9 2 Counties	50.0–59.9 3 Counties	40.0–49.9 2 Counties	30.0–39.9, 11 Counties	20.0–29.9 5 Counties	10.0–19.9 3 Counties	0.0 9.9 5 Counties
A. Warrants Issued	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00
B. Preliminary Hearing													
1. Discharged	8.16	7.98	15.14	18.00	12.32	4.06	2.33	2.71	6.02	7.69	1.46	1.65	
2. Disposed of as misdemeanor	2.77	7.37	1.36	10.00	4.67	.90	1.69	.90	.60	1.47	.29		
3. Dismissed for want of pros.	9.80	1.47	30.35	21.67	17.25	2.46	2.33	2.71		4.25	1.46	.96	
4. Nolle prosequi	2.59	5.70	.47	5.99	3.18	2.00	3.39	5.20	.60	1.39	3.22	.41	
5. Other dispositions	2.76	5.42	3.24	4.67	4.30	1.24	1.91	2.71	.60	1.14	.88	.69	
6. Total	26.08	27.95	50.56	60.33	41.73	10.67	11.65	14.25	7.83	15.94	7.31	3.71	
C. To Grand Jury and Circ. or Pros. Attorney	73.92	72.05	49.44	39.67	58.27	89.33	88.35	85.75	92.17	84.06	92.69	96.29	100.00
1. No true bill	.13	.40			.17	.08						.41	
2. No information issued	3.13	4.62	2.06		2.98	3.27	1.06	2.49	6.02	1.31	1.17	8.65	4.12
3. Total	3.26	5.03	2.06		3.15	3.36	1.06	2.49	6.02	1.31	1.17	9.07	4.12
D. To Circuit Court	70.66	67.02	47.38	39.67	55.12	85.97	87.29	83.26	86.14	82.75	91.52	87.22	95.88
1. Nolle prosequi	15.73	6.84	15.97	10.67	11.61	19.79	29.87	19.00	19.88	19.29	17.54	14.15	25.88
2. Disposed of on action of court	3.57	2.48	.53	5.67	1.81	5.31	2.75	1.36	1.20	3.52	8.48	10.99	8.82
3. Tried and acquitted	4.59	5.56	2.89	1.33	3.90	5.28	4.24	5.20	5.42	4.42	3.80	7.55	7.65
4. Other dispositions	8.66	5.50	4.54	.67	4.61	12.64	6.99	15.61	20.48	11.86	8.19	15.25	16.47
5. Total	32.55	20.38	23.92	18.33	21.93	43.01	43.86	41.18	44.58	39.08	38.01	47.94	58.82
E. Sentence Imposed	38.11	46.65	23.45	21.33	33.19	42.96	43.43	42.08	39.16	43.66	53.51	39.29	37.06
1. Paroled	4.89	2.28	2.06	2.67	2.21	7.54	8.05	3.39	7.23	8.99	7.60	6.46	11.18
2. Appealed	1.32	1.81	.59	1.33	1.18	1.47	1.06	1.81	1.81	1.23	1.75	2.06	
3. Other dispositions	.16	.34	.35		.32								
4. Total	6.37	4.42	3.01	4.00	3.70	9.00	9.11	5.20	9.04	10.22	9.30	8.52	11.18
F. Sentence Executed	31.74	42.23	20.45	17.33	29.49	33.95	34.32	36.87	30.12	33.44	44.15	30.77	25.88

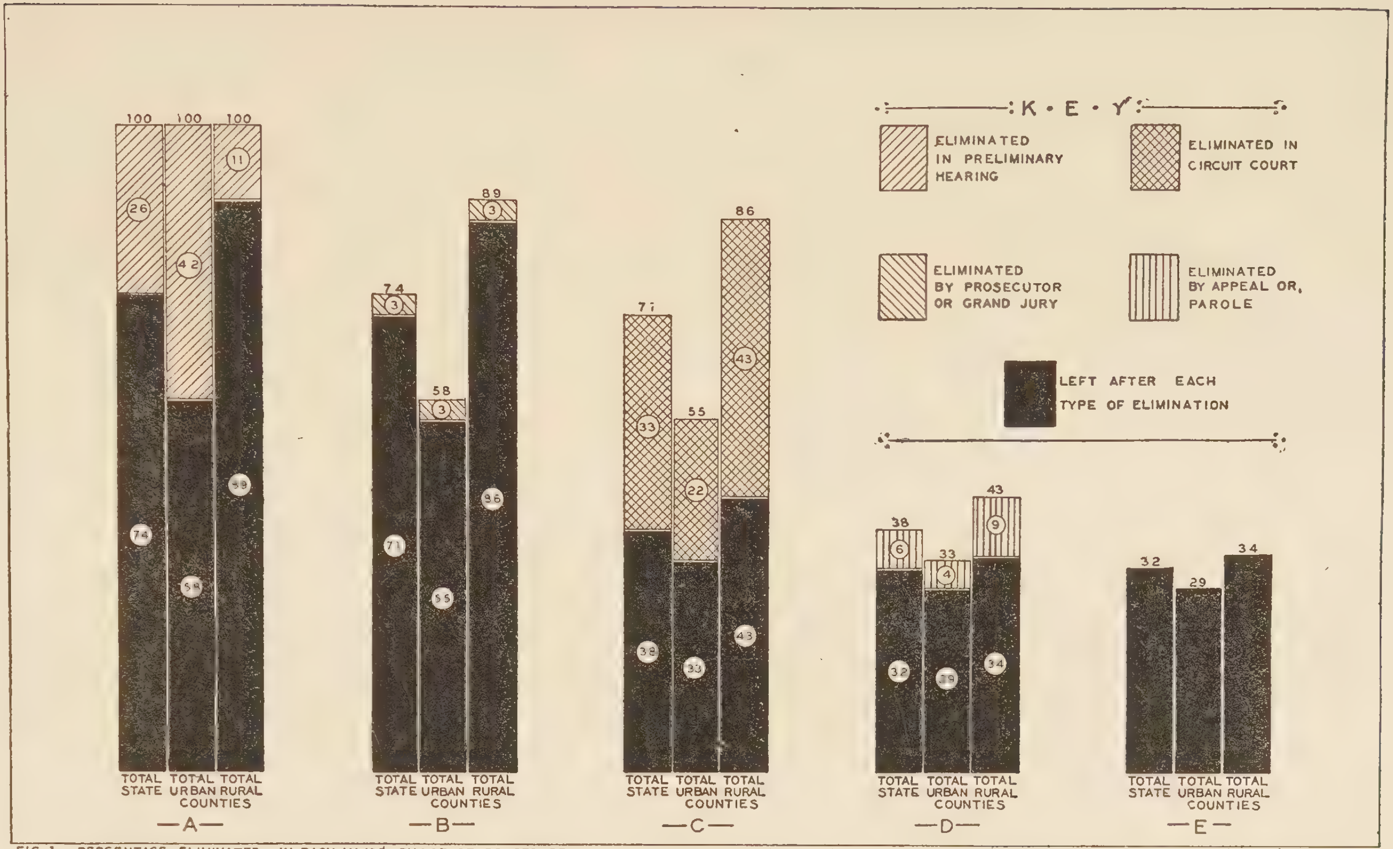

FIG. 1. PERCENTAGE ELIMINATED, IN EACH MAJOR PHASE OF PROCEDURE, IN NON LIQUOR CASES, IN TOTAL STATE, TOTAL URBAN COUNTIES AND TOTAL RURAL COUNTIES. "E" REPRESENTS PERCENTAGE PUNISHED

of all the cases, taking the state as a whole. Nor is there a significant difference between city and country in this respect; 2.98 percent as against 3.27 percent. Reference to the table shows, however, that there is a considerable range among the figures for the several cities and groups of counties from zero percent in Buchanan County (including St. Joseph) to 8.65 percent in the eight counties from 10.0 to 19.9 percent urban.

The Circuit Court—General Analysis.

In the whole state the circuit court, in its capacity as a trial court, as distinct from its function of sentencing and modifying sentences, accounts for the elimination of almost one-third of the cases (32.55 percent). Its numerical importance in the cities is almost exactly one-half of what it is in the country, 21.93 percent as against 43.01 percent. Note, however, that only 55.12 percent of all cases come to the city circuit courts as against 85.97 percent in the country courts. The consistency of the cities in respect to the percentage eliminated in the circuit court is notable; and for all except the least urban counties the range is only from 38.01 percent to 47.94 percent. The least urban show 58.82 percent—nearly six-tenths, eliminated in that part of the process which generally looms largest in the minds of the public. Here there is a distinct difference between city and country.

Sentences Imposed—General Analysis.

Slightly over six percent (6.37) of all cases are kept from execution of sentence by reason of "judicial paroles"—*i.e.* suspension of sentence and probation—or because of appeals, either pending or resulting in reversals by the supreme court. City courts eliminate cases at this point much less than country courts,—in the ratio of 3.70 to 9.00. Here also the cities are fairly consistent among themselves, and the country counties among themselves.

Sentences Executed—General Analysis.

A very significant question is: What is the ratio of sentences executed to warrants issued? The figure for the whole state is 31.74 percent. There is only a slight difference between cities and country in this respect: 29.49 for the former and 33.95 for the latter. The judicial process of St. Louis results in more than twice the percentage of punishments found in either the Jackson County or Buchanan County figures. With the one exception of the 20-29% group of counties St. Louis exceeds all the subdivisions of the state in this respect.

The distribution of dispositions[1] within each of the main subdivisions of the legal procedure will next be discussed, with reference to Tables II-VI. The reason for taking these up separately has already been discussed.

THE PRELIMINARY HEARING—DETAILED ANALYSIS

In Table II we have a more detailed analysis of the dispositions in the preliminary hearing. The bases of the percentages in this table are found by subtracting from the total number of warrants issued the number of cases taken directly to the circuit court, without a preliminary hearing. All of these cases in the preliminary hearing are disposed of in one of two general ways. Either they are eliminated, or they pass on to the next stage of the procedure. Included in those that pass on are those that are "bound over"—to be dealt with by the prosecuting or circuit attorney or by the grand jury—and in the case of St. Louis City, Jackson County and St. Louis County, certain cases nolle prossed in the preliminary hearing on account of another indictment. These cases (numbering in St. Louis City 12, in Jackson County 155, and in St. Louis County 5) are included in the indicted cases that go on to the circuit court. They consist therefore of cases that are for practical purposes "bound over." In each of these three jurisdictions the sum of the bound over cases, the cases going directly to the circuit court, and the "nolle pros. on account of other indictment" cases, equals the number of cases passing to the circuit or prosecuting attorney, to have informations filed or indictments voted.

For the state as a whole the most important cause of elimination is dismissal for want of prosecution. This accounts for 11.64 percent of all cases having a preliminary hearing. These are in general cases in which the witnesses for the prosecution are not present when the case is called. Further examination of the table reveals that the cities lose 20.44 percent of the preliminary hearing cases this way: Jackson County loses 40.39 percent, Buchanan County 21.81 percent. But St. Louis has only 1.60 percent, ranking in this respect below the rural counties which average 2.93 percent.

The group of cases second in importance is composed of those that are discharged by the examining magistrate. He finds the evidence insufficient to hold them on any charge, felony or misdemeanor. These cases constitute nearly one-tenth (9.70 percent) of all cases in the state. Here too the rural counties fall far below the cities, with a percentage of 4.84 as against 14.60 for the cities.

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[1] The grouping of the exact types of dispositions as recorded in the schedules (see pages 537-538-539) into the classes used in the mortality table is as follows:

Preliminary Hearing.

1. (a) Disposed of as misdemeanor, punished.
   (b) Disposed of as misdemeanor, not punished.
2. Discharged outright.
3. Dismissed for want of prosecution.
4. Nolle Prosequi.
5. (a) Certified to juvenile court.
   (b) Continued generally.
   (c) No record.
   (d) Dismissed because of insanity.
   (e) Bond forfeited or never apprehended.

Grand Jury and Circuit or Prosecuting Attorney.

1. No true bill.
2. No information issued.

Circuit Court.

1. (a) Nolle Pros. before arraignment.
   (b) Nolle Pros. after arraignment.
   (c) Nolle Pros. after testimony heard.
   (d) Nolle Pros. after conviction and new trial ordered.
   (e) Nolle Pros. after jury disagrees.
   (f) Nolle Pros. after conviction in other cases.
   (g) Nolle Pros. to use as state's witness.
   (h) Dismissed on motion of prosecuting attorney.
2. (a) Dismissed by consent.
   (b) Dismissed on payment of costs.
   (c) Dismissed on motion of defendant.
   (d) Dismissed on peremptory instruction of court.
   (e) Dismissed on plea in abatement.
   (f) Discharged.
   (g) Discharged on demurrer to evidence.
   (h) Discharged on motion to quash evidence.
   (i) Continued generally.
   (j) Retrial ordered.
3. (a) Tried and acquitted.
   (b) Tried and acquitted on ground of insanity.
4. (a) Dismissed for want of prosecution.
   (b) Case quashed by return of new indictment.
   (c) Certified to other courts.
   (d) Certified to juvenile court.
   (e) Death of defendant suggested and abated.
   (f) No record.
   (g) Case still pending.
   (h) Bail forfeited or never apprehended.
   (i) Venue changed.
   (j) Mistrial.

Sentenced—sentence not yet executed.

1. (a) Paroled.
   (b) Commuted to reform school and paroled.
   (c) Reduction of term of sentence and paroled.
2. (a) Appeal taken.
   (b) Supreme Court reverses.

Sentenced—sentence executed.

1. (a) Committed to penitentiary.
   (b) Fine paid and committed to penitentiary.
2. (a) Committed to reform school.
   (b) Fine paid and committed to reform school.
3. (a) Committed to jail.
   (b) Committed to jail and fine unpaid.
   (c) Committed to jail, fine paid.
   (d) Commuted workhouse to jail.
4. (a) Committed to workhouse.
   (b) Fine paid and committed to workhouse.
5. (a) Fine paid.
   (b) Penitentiary sentence commuted to a fine.
6. (a) Committed to insane asylum.
   (b) Executed.
   (c) Bond forfeited after sentence pronounced.
   (d) Escaped before commitment to institution.
   (e) No record.
   (f) Pending after commitment to penitentiary.
   (g) Fine stayed on payment of costs.

TABLE II

Percentage Distribution of Cases Eliminated in the Preliminary Hearing

Base of Percentages, Number of Cases Entering Preliminary Hearing

	Total for State				Total Three Urban Counties	Total Thirty-Six Counties	Counties grouped according to percentage of population living in incorporated places of 2500 or more.						
Disposition	Number	St. Louis City Number	Jackson County Number	Buchanan County Number	Number	Number	60.0–69.9 2 Counties Number	50.0–59.9 3 Counties Number	40.0–49.9 2 Counties Number	30.0–39.9, 11 Counties Number	20.0–29.9 5 Counties Number	10.0–19.9 8 Counties Number	0.0–9.9 5 Counties Number
Warrants issued	7032	1492	1697	300	3489	3543	472	442	166	1223	342	728	170
Taken directly to Circuit Court	1113	120	422	2	544	569	47	70	39	222	27	135	29
Total cases in prel. hearing	5919	1372	1275	298	2945	2974	425	372	127	1001	315	593	141
	Percent	Percent	Percent	Percent	Percent	Percent	Percent	Percent	Percent	Percent	Percent	Percent	Percent
Total cases in prel. hearing	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00
1. Disposed of as misdemeanor	3.29	8.02	1.80	10.06	5.53	1.08	1.88	1.08	.79	1.80	.32		
2. Discharged outright	9.70	8.67	20.16	18.12	14.60	4.84	2.59	3.23	7.87	9.39	1.59	2.02	
3. Dismissed for want of pros.	11.64	1.60	40.39	21.81	20.44	2.93	2.59	3.23		5.19	1.59	1.18	
4. Nolle prosequi	3.07	6.20	.63	6.04	3.77	2.39	3.76	6.18	.79	1.70	3.49	.51	
5. Other dispositions	3.28	5.90	4.31	4.70	5.09	1.48	2.12	3.23	.79	1.40	.95	.84	
Total eliminated	30.98	30.39	67.29	60.74	49.44	12.71	12.94	16.94	10.24	19.48	7.94	4.55	
Bound over	66.11	68.73	20.55	39.26	44.89	87.12	87.06	83.06	89.76	80.02	92.06	95.45	100.00
Nolle pros. acct. other indictment	2.91	.87	11.76		5.67	.17				.50			

Here, as in the preceding group of cases, St. Louis stands well under the other two cities, with Jackson County slightly leading Buchanan. There seems to be a notable disinclination of country justices of the peace to discharge persons, as compared with a general willingness to do so on the part of their colleagues in St. Joseph and Kansas City.

The three other groups of dispositions are of nearly equal importance. One is the responsibility of the examining magistrate who may reduce the charge from that of a felony to that of a misdemeanor—as for example when the value of goods stolen can be shown to be less than $30.00 though the value was originally set at $30.00 or more. The "nolle prosequi" of the prosecutor indicates his opinion as to the chance of success in a prosecution. It is entirely his responsibility. These two dispositions, "disposed of as a misdemeanor" and "nolle prossed" are in the state as a whole, of only slight importance—3.29 and 3.07 percent respectively. But the city magistrates use the former about five times as frequently as the country justices, 5.53 percent to 1.08 percent. The city prosecutors use the "nolle pros" more than the country prosecutors, but there is not so great a disparity here—3.77 percent to 2.39 percent. There is, however, in the case of the "nolle pros" a wide divergence of practice in the rural groups, with the more urban counties showing a greater use of it. Miscellaneous dispositions (see footnote page 280) are about three times as frequent in the city as in the country.

Taking the state as a whole, 66.11 percent of the cases entering the preliminary hearing are bound over, and 2.91 percent are "nolle prossed on account of the other indictments." Together these constitute 69.02 percent. For the cities these amount to 44.89 and 5.67 percent respectively; for the counties 87.12 and 0.17 percent, totaling 50.56 in the cities, and 87.29 percent in the counties. In other words, half of the city preliminary cases and seven-eighths of the country cases go on to the next stage. Here also St. Louis ranks considerably above the other two cities, though it falls somewhat below the counties. The less urban counties show a higher percentage than those of greater urban population.

THE PROSECUTING ATTORNEY AND THE GRAND JURY—DETAILED ANALYSIS

Table III reveals another phase of the activities of the prosecuting or circuit attorney. This is the decision whether any information should be filed. Taking all the cases coming from the preliminary hearing plus the cases carried directly to the circuit court, we have a total of all the cases in the hands of the prosecutor at this point of the proceedings. Of these aggregate cases 4.23 percent stop by reason

TABLE III

Percentage Distribution of Cases Disposed of by Grand Jury or by Prosecutor

Base of Percentage is the Sum of the Number of Cases Bound Over, Nolle Prossed on Account Other Indictments, and Cases Taken Directly to Circuit Court

Disposition	Total for State				Total Three Urban Counties	Total Thirty-Six Counties	Counties grouped according to percentage of population living in incorporated places of 2500 or more						
		St. Louis City	Jackson County	Buchanan County			60.0–69.9 2 Counties	50.0–59.9 3 Counties	40.0–49.9 2 Counties	30.0–39.9, 11 Counties	20.0–29.9 5 Counties	10.0–19.9 8 Counties	0.0–9.9 5 Counties
	Number	Number	Number	Number	Number	Number	Number	Number	Number	Number	Number	Number	Number
Bound over	3913	943	262	117	1322	2591	370	309	114	801	290	566	141
Nolle pros. acct. other indict.	172	12	155		167	5				5			
Taken directly to Circuit Court	1113	120	422	2	544	569	47	70	39	222	27	135	29
Total cases to grand jury and Pros.	5198	1075	839	119	2033	3165	417	379	153	1028	317	701	170
	Percent	Percent	Percent	Percent	Percent	Percent	Percent	Percent	Percent	Percent	Percent	Percent	Percent
Total cases to grand jury and Pros.	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00
No true bill	.17	.56			.30	.09						.43	
No information issued	4.23	6.42	4.17		5.12	3.67	1.20	2.90	6.54	1.56	1.26	8.99	4.12
Total eliminated	4.41	6.98	4.17		5.41	3.76	1.20	2.90	6.54	1.56	1.26	9.42	4.12
Remaining for Circuit Court	95.59	93.02	95.83	100.00	94.59	96.24	98.80	97.10	93.46	98.44	98.74	90.58	95.88

of his refusal to issue any information. But here the city prosecutors are not much more active than those of the counties; 5.12 percent of the cases stop in the hands of the former as against 3.67 percent in the hands of the latter. In this activity the St. Louis City circuit attorney leads the city prosecutors, but falls behind one group of country prosecutors—those in the 10-19.9 percent counties. The negligible role of the grand jury in the elimination of cases is shown in the fact that only 0.17 percent of all the cases in the state fall into the "no true bill" class.

THE CIRCUIT COURT—DETAILED ANALYSIS

In Table IV we have the percentage distribution of the various types of elimination that occur in the circuit court, based upon the total number of cases entering that court. Of all cases entering this stage of procedure in the state as a whole, 46.07 percent are eliminated; for the cities this figure is 39.78 percent; for the country counties 50.03 percent. This comparison shows that the circuit courts outside the cities are responsible for about five-fourths as much elimination as that taking place in the city circuit courts. The analysis of these totals shows an astonishing uniformity in the proportion eliminated by the "nolle prosequi" of the prosecutor. In the state as a whole 22.26 percent, in the cities 21.06 percent, in the counties 23.01 percent. The cities show quite a range of values—10.20 for St. Louis, 26.89 for Buchanan, and 33.71 for Jackson County. The range of the groups of counties is not so great—16.22 to 34.22. The judge disposes of cases on his own authority to the extent of 5.05 percent throughout the state, 3.28 in the cities as against 6.17 percent in the counties. It is commonly believed that acquittal after trial accounts for a large percentage of those escaping punishment. How insignificant that process is, the following figures clearly show. In the entire state 6.50 percent; in the three cities 7.07 percent; and in rural counties 6.14 percent. It is clear that this type of elimination, instead of being typical, really ranks very low in importance.

Miscellaneous ("other") dispositions account for 12.26 percent for the whole state, 8.37 percent for the cities and 14.71 percent in the counties.

SENTENCES IMPOSED—DETAILED ANALYSIS

When all these eliminations are deducted, we have left the group of those sentenced; for the state 53.93 percent; for the cities 60.22 percent, for the counties 49.97 percent. This difference goes back to the point already mentioned—that since the circuit courts in the

TABLE IV

Percentage Distribution of Cases Disposed of in the Circuit Court
Base of Percentage is Total Number of Cases Entering Circuit Court

Disposition	Total for State	St. Louis City	Jackson County	Buchanan County	Total Three Urban Counties	Total Thirty-Six Counties	Counties grouped according to percentage of population living in incorporated places of 2500 or more.						
							60.0–69.9 2 Counties	50.0–59.9 3 Counties	40.0–49.9 2 Counties	30.0–39.9, 11 Counties	20.0–29.9 5 Counties	10.0–19.9 8 Counties	0.0–9.9 5 Counties
	Number	Number	Number	Number	Number	Number	Number	Number	Number	Number	Number	Number	Number
To grand jury and prosecutor	5198	1075	839	119	2033	3165	417	379	153	1028	317	701	170
No bill, no information	229	75	35		110	119	5	11	10	16	4	66	7
Total to Circuit Court	4969	1000	804	119	1923	3046	412	368	143	1012	313	635	163
	Percent	Percent	Percent	Percent	Percent	Percent	Percent	Percent	Percent	Percent	Percent	Percent	Percent
Total cases to Circuit Court	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00
1. Nolle prosequi	22.26	10.20	33.71	26.89	21.06	23.01	34.22	22.83	23.08	23.32	19.17	16.22	26.99
2. Disposed of on action of court	5.05	3.70	1.12	14.29	3.28	6.17	3.16	1.63	1.40	4.25	9.27	12.66	9.20
3. Tried and acquitted	6.50	8.30	6.09	3.36	7.07	6.14	4.85	6.25	6.29	5.34	4.15	8.66	7.98
4. Other dispositions	12.26	8.20	9.58	1.68	8.37	14.71	8.01	18.75	23.78	14.33	8.95	17.48	17.18
5. Total eliminated	46.07	30.40	50.50	46.22	39.78	50.03	50.25	49.46	54.54	47.23	41.53	54.96	61.35
Sentence Imposed	53.93	69.60	49.50	53.78	60.22	49.97	49.75	50.54	45.46	52.77	58.47	45.04	38.65
1. Paroled	6.92	3.40	4.35	6.72	4.00	8.77	9.22	4.08	8.39	10.87	8.31	7.40	11.66
2. Appealed	1.87	2.70	1.24	3.36	2.13	1.71	1.21	2.17	2.10	1.48	1.92	2.36	
3. Other dispositions	.22	.50	.75		.57								
4. Total	9.02	6.60	6.34	10.08	6.71	10.47	10.44	6.25	10.49	12.35	10.22	9.76	11.66
Sentence executed	44.92	63.00	43.16	43.70	53.51	39.49	39.32	44.29	34.97	40.42	48.24	35.28	26.99

TABLE V

Percentage Distribution of All Cases Sentenced

Base of Percentage is All Cases Sentenced

Disposition	Total for State				Total Three Urban Counties	Total Thirty-Six Counties	Counties grouped according to percentage of population living in incorporated places of 2500 or more.						
	Number	St. Louis City Number	Jackson County Number	Buchanan County Number	Number	Number	60.0–69.9 2 Counties Number	50.0–59.9 3 Counties Number	40.0–49.9 2 Counties Number	30.0–39.9, 11 Counties Number	20.0–29.9 5 Counties Number	10.0–19.9 8 Counties Number	0.0–9.9 5 Counties Number
Total sentenced	2680	696	398	64	1158	1522	205	186	65	534	183	286	63
Total sentenced	Percent 100.00	Percent 100.00	Percent 100.00	Percent 100.00	Percent 100.00	Percent 100.00	Percent 100.00	Percent 100.00	Percent 100.00	Percent 100.00	Percent 100.00	Percent 100.00	Percent 100.00
1. Paroled	12.84	4.89	8.79	12.50	6.65	17.54	18.54	8.06	18.46	20.60	14.21	16.43	30.16
2. Appealed	3.47	3.88	2.51	6.25	3.54	3.42	2.45	4.30	4.62	2.81	3.28	5.24	
3. Other dispositions	.41	.72	1.51		.95								
4. Total sentenced, sentce. never exctd.	16.72	9.48	12.81	18.75	11.14	20.96	20.98	12.37	23.08	23.41	17.49	21.68	30.16
Sentence excuted	83.28	90.52	87.19	81.25	88.86	79.04	79.02	87.63	76.92	76.59	82.51	78.32	69.84

city receive so small a proportion of all the cases, their proportion of elimination is likely to be small; for the weak cases have disappeared earlier in their careers. The country courts show an opposite tendency of elimination for the opposite reason. There the weak cases have survived into the circuit court and tend to disappear at this stage.

Of all cases entering the circuit court the percentages eliminated by parole (judicial) differ notably as between country and city. The counties parole 8.77 percent as against 4.00 percent in the cities. Here also the reasoning of the preceding paragraph must be applied. The opposite is true of the use of appeals, which is less in the country than in the cities (1.71 percent as compared with 2.13 percent). While appeals, and the delay of appeals loom large in the public mind, they are actually of little numerical importance.

Combining then all eliminations in the circuit court, both those preceding sentence and those following it, we see that the city circuit court holds a considerably greater percentage of its cases (once arrived at this stage) than does the country court; 53.51 as against 39.49; with an average of 44.92 percent for the entire state. Moreover, there is a considerable range in the percentages in the city group, and in the country group.

Coming down the course one stage further we note in Table V that of all cases sentenced the country shows nearly three times as large a proportion paroled as the city shows; 17.54 percent to 6.65 percent.

Kinds of Punishments—Detailed Analysis

In Table VI we have the distribution of punishments. It should be remembered that we are dealing throughout this study with felonies, the general definition of which is "crimes that are punishable or may be punished by death or by imprisonment in the State Prison."[1] Yet slightly less than one-half, 49.69 percent, of those who actually receive any punishment are committed to the state penitentiary; and this figure is only slightly exceeded in the cases from rural counties (51.21 percent) and slightly fallen short of by city cases (47.91 percent). 6.00 percent for the state, 3.21 percent for the cities and 8.40 percent for the counties are committed to the reformatory. This is of course partly affected by the limitations (age and otherwise) on commitment to this institution. The jail is numerically much more important as a place of punishment, and its importance is almost the same for country and cities; 13.47 and 13.41 percent respectively. It should be noted, however, that

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[1] Clark & Marshall—The Law of Crimes; Second Edition, pp. 9, 10.

TABLE VI

Percentage Distribution of Types of Punishment

Base of Percentage is All Cases Punished

	Total for State				Total Three Urban Counties	Total Thirty-Six Counties	Counties grouped according to percentage of population living in incorporated places of 2500 or more.						
Disposition	Number	St. Louis City Number	Jackson County Number	Buchanan County Number	Number	Number	60.0–69.9 2 Counties Number	50.0–59.9 3 Counties Number	40.0–49.9 2 Counties Number	30.0–39.9, 11 Counties Number	20.0–29.9 5 Counties Number	10.0–19.9 8 Counties Number	0.0–9.9 5 Counties Number
Sentence executed	2232	630	347	52	1029	1203	162	163	50	409	151	224	44
Sentence executed	Percent 100.00	Percent 100.00	Percent 100.00	Percent 100.00	Percent 100.00	Percent 100.00	Percent 100.00	Percent 100.00	Percent 100.00	Percent 100.00	Percent 100.00	Percent 100.00	Percent 100.00
Committed to Penitentiary	49.69	30.48	74.93	78.85	47.91	51.21	67.28	46.63	34.00	53.06	43.71	52.68	29.55
Committed to Reformatory	6.00	4.76	.86		3.21	8.40	5.56	5.52	12.00	13.94	8.61	2.26	13.64
Committed to Jail	13.44	7.30	24.21	15.38	13.41	13.47	19.14	25.77	18.00	7.82	10.60	11.61	13.64
Committed to Workhouse	10.93	38.73			23.71								
Fine paid	12.32	18.73		3.85	11.66	12.88	4.94	14.11	32.00	11.25	16.56	13.84	13.64
Other dispositions	7.62			1.92	.10	14.05	5.56	7.98	4.00	13.94	20.53	19.64	29.55
Total sentence executed	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00

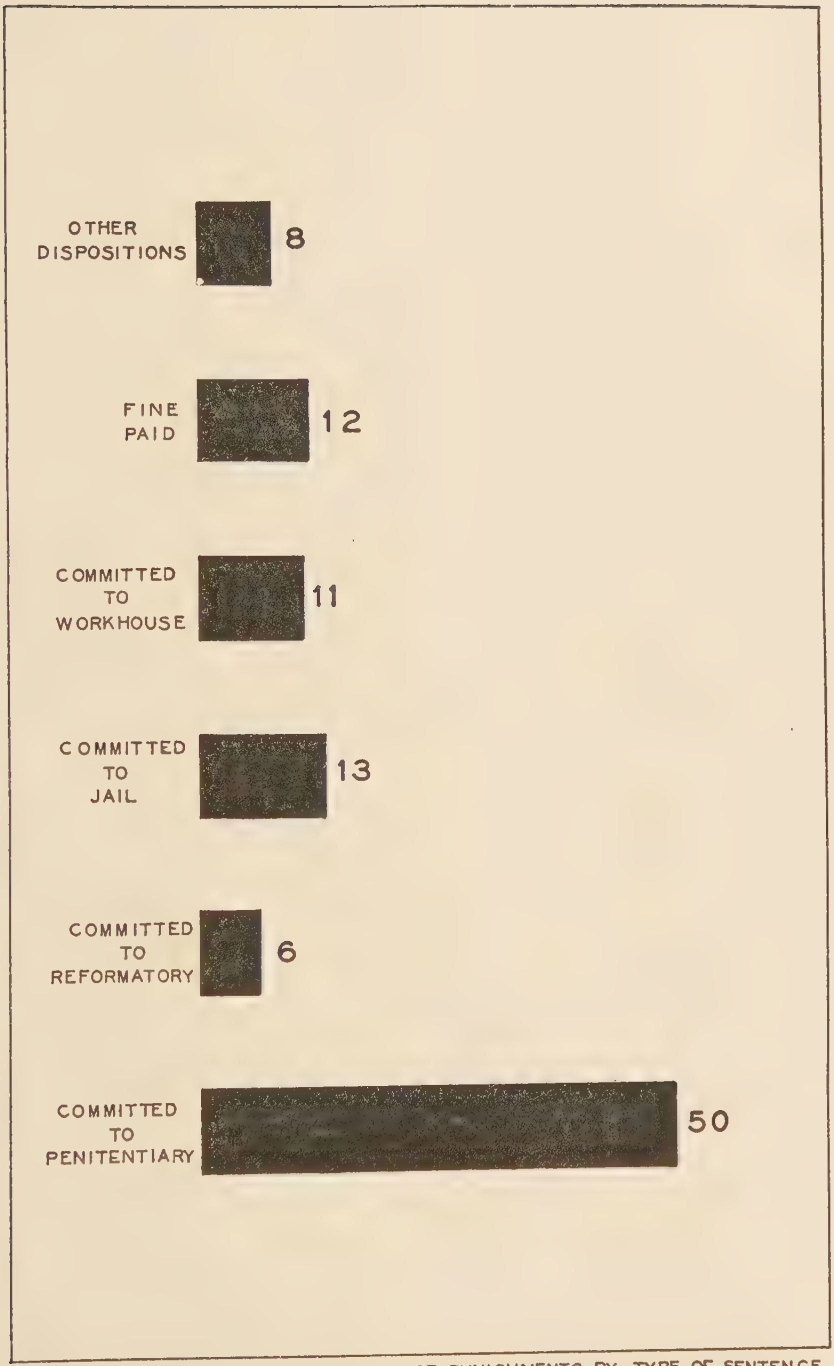

FIG. 2. PERCENTAGE DISTRIBUTION OF PUNISHMENTS BY TYPE OF SENTENCE.

this uniformity is definitely lacking when we compare the several cities and groups of counties. St. Louis shows the only cases sent to the workhouse, 38.73 percent of all cases punished. With respect to the payment of fines cities and counties are also almost on a parity (11.66 percent and 12.88 percent) though here again there is a wide variation among the cities and groups of counties. It may be significant or not that only one case of "other disposition" appears in the city group, as against 169 in the country (0.10 percent against 14.05 percent).

A New Basis of Comparison of St. Louis City and Jackson County

The data for St. Louis City and Jackson County differ from those of other jurisdictions in the respect that they begin with the total of charges made by the police, and include in this total a number of cases in which the prosecuting or circuit attorney has refused to issue a warrant—*i.e.* to authorize the further detention of the accused. If then we regard the base of a new mortality table as being this total of charges lodged by the police, we have a new basis of estimating the chances of any person who gets arrested being able to escape without punishment, a basis in many respects preferable to that of the number of warrants issued.

A condensed mortality table for the two cities on this new basis is as follows:

	St. Louis City	Jackson County
Total charges	2474—100.00%	2070—100.00%
Warrants refused	39.29	17.55
Other dispositions before arrest	.40	.48
Warrants issued	60.31	81.98
Eliminated in the Preliminary Hearing	16.85	41.45
Eliminated by Grand Jury and Prosecutor	3.03	1.69
Eliminated in circuit court	12.29	19.61
Paroled or appealed	2.67	2.46
Punished	25.46	16.76

The circuit attorney of St. Louis City is responsible then for the elimination of almost 40 percent of the cases before any judicial procedure has been applied. Jackson County's prosecutor disposes of less than half this proportion of cases (17.55). The final figure—the percentage of those punished—is significant. It means that of 100 cases which in the mind of the police justified asking for a warrant, 25 in St. Louis and 17 in Jackson County actually received punishment as felonies.

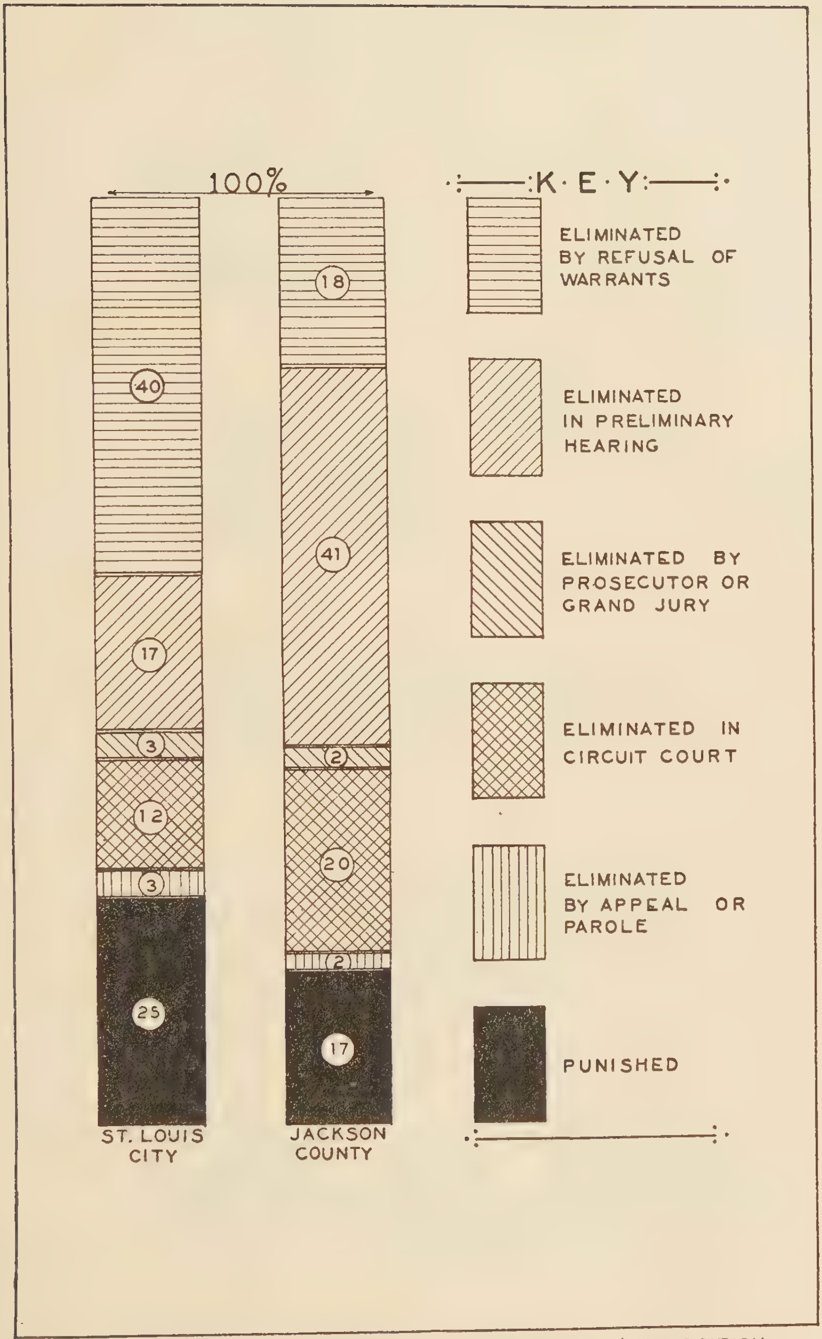

FIG 3 PERCENTAGE DISTRIBUTION OF TOTAL CHARGES BY DISPOSITION, ST. LOUIS CITY AND JACKSON COUNTY—(EXCLUDING LIQUOR CASES)

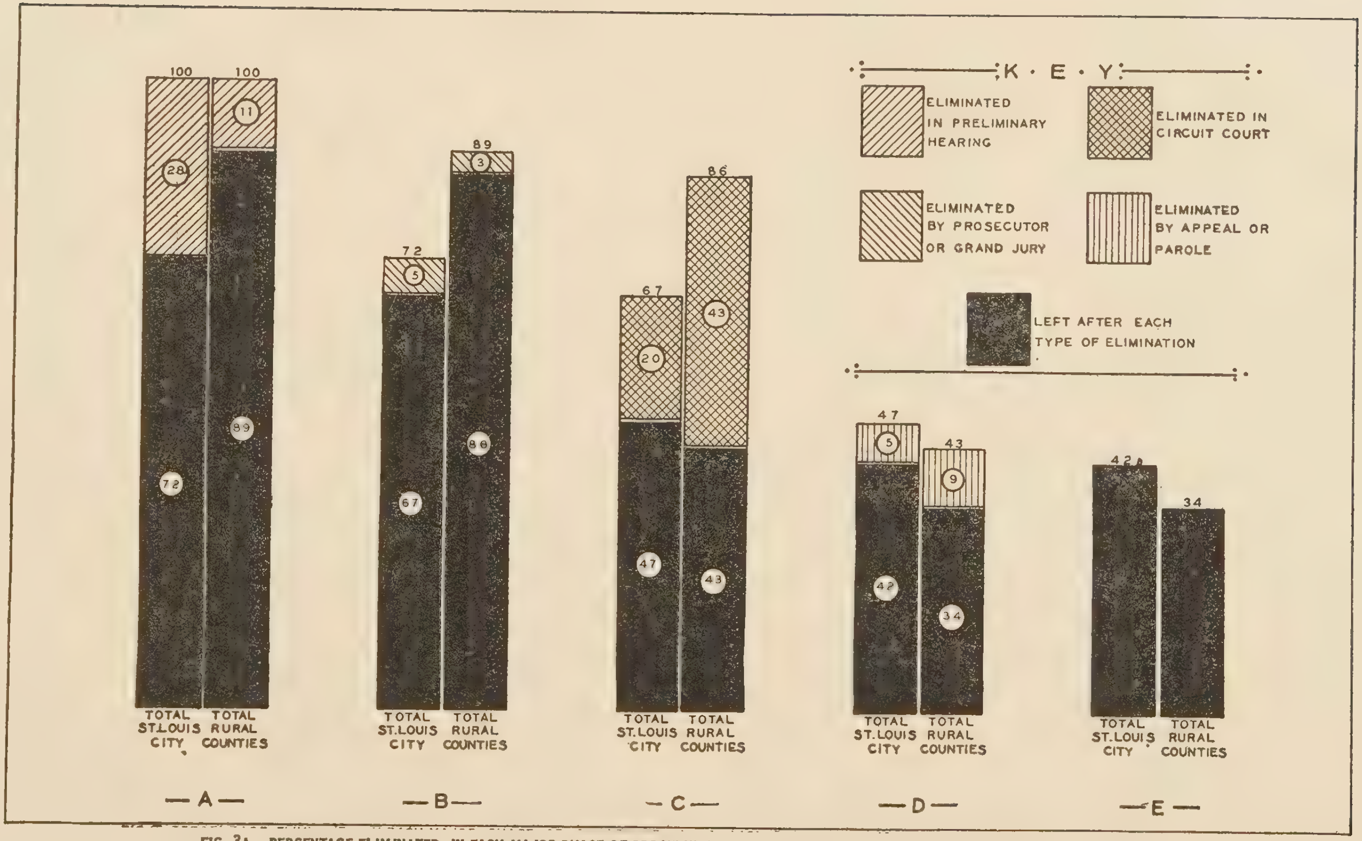

FIG. 3A PERCENTAGE ELIMINATED, IN EACH MAJOR PHASE OF PROCEDURE, IN NON LIQUOR CASES, IN ST. LOUIS AND TOTAL RURAL COUNTIES. "E" REPRESENTS PERCENTAGE PUNISHED.

THE STATE AS A WHOLE—RESPONSIBILITY FOR ELIMINATION

A further analysis of the mortality table can be made with reference to the distribution of responsibility for the elimination of cases. In general the elimination of cases may be regarded as falling under the heads of those eliminated by the prosecutor, those eliminated by the judges (of both courts) and those removed in other, miscellaneous ways.

Table VII shows the summary of all cases beginning with warrants issued. Included under "eliminated by prosecutor" are all cases of nolle prosequi and refusal to issue warrant. Under "eliminated by judge" are all cases in which the responsibility might be fairly placed on the shoulders of the judge; in the preliminary hearing the dispositions "discharged" and "disposed of as misdemeanor," in the circuit court "disposed of on action of court" and "paroled."

The average elimination by prosecutors for the whole state is 21.44 percent, one in five. For the three cities it amounts to 18.00 percent, for the counties 25.06 percent. The three cities are fairly consistent among themselves, 17.16, 18.50, 19.33. The groups of counties show a wider variation, but one which is not significant.

For the state as a whole the judges eliminate about the same proportions as the prosecutors (19.40 percent). In this comparison cities and counties are very close together (20.89 percent and 17.81 percent) St. Louis City and Jackson County are close to the average for the cities—but Buchanan County departs widely from it, having by far the highest percentage of any city or group of counties. Except for one group the counties are fairly consistent.[1]

ST. LOUIS CITY AND JACKSON COUNTY AGAIN

When the number of warrants refused and a few miscellaneous disposals of cases before entering the preliminary hearing are added to warrants issued we have the basis of the following summary table:

Disposition	St. Louis City		Jackson County	
	Number	Percent	Number	Percent
Total charges	2474	100.00	2070	100.00
Eliminated by prosecutor	1228	49.64	677	32.71
Eliminated by judge	300	12.12	324	15.65
Other dispositions	946	38.24	1069	51.64

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[1] It should be noted that the data on preliminary hearings in the counties is not so complete as that in the cities, as rural justices of the peace do not usually keep a record of cases which are not sent on to the circuit court.

TABLE VII

Percentage of Total Warrants Issued Eliminated by Prosecutor, by Judges and in Other Ways

	Total for State				Total Three Urban Counties	Total Thirty-Six Counties	Counties grouped according to percentage of population living in incorporated places of 2500 or more						
Disposition	Number	St. Louis City Number	Jackson County Number	Buchanan County Number	Number	Number	60.0–69.9 2 Counties Number	50.0–59.9 3 Counties Number	40.0–49.9 2 Counties Number	30.0–39.9, 11 Counties Number	20.0–29.9 5 Counties Number	10.0–19.9 8 Counties Number	0.0–9.9 5 Counties Number
Warrants Issued....................	7032	1492	1697	300	3489	3543	472	442	166	1223	342	728	170
Warrants Issued....................	Percent 100.00	Percent 100.00	Percent 100.00	Percent 100.00	Percent 100.00	Percent 100.00	Percent 100.00	Percent 100.00	Percent 100.00	Percent 100.00	Percent 100.00	Percent 100.00	Percent 100.00
Eliminated by Prosecutor...........	21.44	17.16	18.50	19.33	18.00	25.06	34.32	26.70	26.51	22.00	21.93	23.21	30.00
Eliminated by Judge................	19.40	20.11	19.09	35.00	20.89	17.81	14.83	8.37	15.06	21.67	17.84	19.09	20.00
Other dispositions.................	59.16	62.73	62.41	45.67	61.11	57.13	50.85	64.93	58.43	56.33	60.23	57.70	50.00

TABLE VIII

Appeals, Retrials, Mistrials and Changes of Venue

Base of Percentages Total Warrants Issued

	Total for State				Total Three Urban Counties	Total Thirty-Six Counties	Counties grouped according to percentage of population living in incorporated places of 2500 or more.						
Disposition	Number	St. Louis City Number	Jackson County Number	Buchanan County Number	Number	Number	60.0–69.9 2 Counties Number	50.0–59.9 3 Counties Number	40.0–49.9 2 Counties Number	30.–0 39.9, 11 Counties Number	20.0–29.9 5 Counties Number	10.0–19.9 8 Counties Number	0.0–9.9 5 Counties Number
Warrants Issued	7032	1492	1697	300	3489	3543	472	442	166	1223	342	728	170
Total appeals, etc.	361	37	45	5	87	274	11	61	12	85	18	76	11
	Percent	Percent	Percent	Percent	Percent	Percent	Percent	Percent	Percent	Percent	Percent	Percent	Percent
Warrants Issued	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00
Total appeals, etc.	5.13	2.48	2.65	1.67	2.49	7.73	2.33	13.80	7.22	6.95	5.26	10.44	6.47
Appeals	2.23	1.81	2.24	1.33	1.98	2.48	1.69	2.94	3.61	2.29	3.22	2.88	.59
Retrials	.24	.54	.12		.29	.20						.82	.59
Mistrials	.65	.13	.29	1.33	.23	1.07	.42	.68		.65	.29	3.16	.59
Change of Venue	2.00					3.98	.21	10.18	3.61	4.01	1.75	3.57	4.71

Naturally the large proportion of cases in which warrants were refused by the prosecutor in St. Louis City and Jackson County swell the proportion of eliminations by this officer, and reduce the percentages of other types of elimination. One-half (49.64 percent) of all cases charged with felony in St. Louis and one-third (32.71 percent) in Jackson County drop out at this point. Since no "warrants refused" were reported from Buchanan County, and only three for all the counties, there is practically no change in these jurisdictions from the figures of Table VII.

Appeals, Retrials, Mistrials, Changes of Venue

A commonly held notion is that ease of appeal, defective functioning of juries resulting in mistrials, retrials, allowed by the trial court, and changes of venue are important factors in the delay of justice, that they are phases of its weakening, and that they tend to reduce public confidence in the judicial process in general.

Table VIII is a summary of the data of the basic figures, showing for each city and group of counties the number of cases of these occurrences. One case out of twenty in which warrants were issued (5.13 percent) falls under this heading for the state as a whole. The cities show just about half this percentage (2.49) and the counties one and one-half times (7.73). In the cities appeals account for nearly four-fifths of this whole group (1.98 percent out of a total of 2.49 percent) and retrials and mistrials are almost negligible. But in the counties appeals count for roughly one-third (2.48) of this group; mistrials for one-seventh (1.07) and changes of venue for slightly over one-half (3.98). The cities show less variability for the

TABLE VIIIA

Percentage Distribution of Dispositions of Cases Appealed

	State		Urban Counties		Rural Counties	
	Number	Percent	Number	Percent	Number	Percent
Total Cases	[1]157	100.00	69	100.00	88	100.00
Appeals pending	105	66.88	62	89.85	43	48.86
Reversed and remanded	8	5.10	1	1.45	7	7.95
Reversed outright	2	1.27			2	2.27
Not perfected	15	9.55	2	2.90	13	14.77
Dismissed	5	3.18	2	2.90	3	3.41
Affirmed	22	14.01	2	2.90	20	22.73

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[1] The total "appealed" in the Mortality Tables is 93. The difference between this total and that of the present table (157) is accounted for by the fact that the 93 cases include only those that had escaped punishment (within the period of the record) as a result of the appeals, while the present Table includes all cases in which an appeal was made. Some of those counted as pending were committed pending appeal; some—though not all—of those whose conviction was affirmed were not yet committed.

whole group than the counties. No relationship between these facts and the "urbanness" of the counties is discernible.

The totals of retrials and mistrials for the state are so small (17 and 46 respectively) that the distribution of these groups by disposition scarcely deserves comment. Appeals (157 cases) and changes of venue (141 cases) are numerous enough to be briefly summarized in the two tables VIIIA and VIIIB.

APPEALS

In the state as a whole two-thirds (66.88 percent) of all appeals are "pending," to which should be added appeals not yet perfected—about one-eleventh (9.55 percent). Together these amount to 76.43 percent. Affirmed cases are 14.01 percent, and reversed, reversed and remanded, constitute 6.37 percent. On the basis of this last figure then, it appears that 6.37 percent of 2.23 percent, *i.e.* 0.14 percent of all warrants issued actually are eliminated by the appeal method; assuming of course that the balance between pending and decided cases remains fairly constant over a period of time. There is a notable difference between city and county in respect to the disposition of appeals. In the cities 92.75 percent and in the counties only 63.63 percent are pending or not perfected; and there is in these figures a record for the cities of only 1.45 reversals of any type, whereas they constitute 10.22 of appealed cases in the country.

CHANGES OF VENUE

The outcome of cases in which changes of venue were taken is indicated in the following figures:

TABLE VIIIB

PERCENTAGE DISTRIBUTION OF DISPOSITION OF CASES GRANTED CHANGES OF VENUE

	Number	Percent
Total Change of Venue	141	100.00
No record	59	41.84
Nolle prosequi	5	3.55
Convicted—appealed	4	2.84
Acquitted on retrial	13	9.22
Pending	35	24.82
Penitentiary	5	3.55
Fined and jail—Appeal pending	1	.71
Convicted on lesser offense—Retrial ordered	1	.71
Dismissed	6	4.26
Penitentiary, appeal pending	3	2.13
Continued generally	3	2.13
Plea in abatement sustained	5	3.55
Guilty as charged	1	.71

Of the 141 changes of venue recorded, results are unknown in 59 cases (41.84 percent); 35 (24.82 percent) are pending, leaving 47 (33.34 percent) disposed of. These latter consist of 32 cases eliminated without sentence (nolle pros., acquitted, dismissed, continued generally and plea in abatement sustained) totalling 27.66 percent and 15 sentenced (10.64 percent). Of the sentenced, however, 8 (5.67 percent) had appealed, of whom 3 were already in the penitentiary.

In concluding this section it should be remembered that the numbers of cases of appeals, etc. are small, and that therefore the percentages are not too representative. The large proportion of cases pending further weakens any conclusions we may draw.

Sentence and Jury Trials

The popularly accepted idea as to the judicial procedure in criminal cases is this: the defendant passes through the preliminary hearing is bound over, pleads not guilty, stands trial and is convicted or acquitted by a jury of his peers. In the general mortality table (Tables IA and IB) we saw that a very small percentage of all defendants are acquitted after a trial of this kind (4.59 percent for the state and 3.90 and 5.28 percent for city and country respectively). It remains to be seen what proportions of all cases sentenced come to that conclusion by the route of jury trial and how many by other routes.

Table IXA gives the percentage distribution of those sentenced according to the phase of procedure which resulted in sentence. For the state as a whole, and for the three cities together and the 36 counties together there is an almost perfect uniformity—80.26, 80.48 and 80.09 percent respectively plead guilty of the offense charged. In four out of five cases those guilty admit their guilt and save the state the trouble of trial. There is also a high degree of uniformity in the several cities and counties in this respect, the percentages ranging from 70.77 in the 40.0-49.9 percent counties to 90.48 in the least urban counties (0.0-9.9 percent).

Those tried and found guilty of the offense charged are 16.49 percent of all the guilty in the state as a whole, 17.18 in the three cities and 15.97 in the 36 counties. Here the divergencies are greater, relatively than in the case of those sentenced on plea, the range being from 4.69 percent in Buchanan County to 24.87 in Jackson County with the rural counties somewhat more uniform though not notably so.

TABLE IX-A

CASES SENTENCED CLASSIFIED BY TYPE OF PROCEDURE LEADING TO SENTENCE

Base of Percentages Total Number Sentenced

	Total for State				Total Three Urban Counties	Total Thirty-Six Counties	Counties grouped according to percentage of population living in incorporated places of 2500 or more.						
Disposition	Number	St. Louis City Number	Jackson County Number	Buchanan County Number	Number	Number	60.0–69.9 2 Counties Number	50.0–59.9 3 Counties Number	40.0–49.9 2 Counties Number	30.0–39.9, 11 Counties Number	20.0–29.9 5 Counties Number	10.0–19.9 8 Counties Number	0.0–9.9 5 Counties Number
Total Sentenced	2680	696	398	64	1158	1522	205	186	65	534	183	286	63
	Percent	Percent	Percent	Percent	Percent	Percent	Percent	Percent	Percent	Percent	Percent	Percent	Percent
Total Sentenced	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00
Sentenced on plea of guilty	80.26	83.91	72.61	92.19	80.48	80.09	79.51	79.57	70.77	79.03	85.79	79.02	90.48
Tried and found guilty as charged	16.49	13.94	24.87	4.69	17.18	15.97	17.07	18.28	18.46	16.48	10.38	17.13	9.52
Tried and found guilty of lesser offense	3.10	2.01	2.51	3.13	2.25	3.75	2.93	1.61	10.77	4.30	3.83	3.85	
Jury disagrees, defendent pleads guilty to lesser offense	.15	.14			.09	.20	.49	.54[1]		.19			

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[1] Punished; no record whether trial or plea.

TABLE IX-B

CASES SENTENCED CLASSIFIED BY TYPE OF PROCEDURE LEADING TO SENTENCE

Base of Percentages Total Warrants Issued

Disposition	Total for State	St. Louis City	Jackson County	Buchanan County	Total Three Urban Counties	Total Thirty-Six Counties	Counties grouped according to percentage of population living in incorporated places of 2500 or more						
							60.0–69.9 2 Counties	50.0–59.9 3 Counties	40.0–49.9 2 Counties	30.0–39.9, 11 Counties	20.0–29.9 5 Counties	10.0–19.9 8 Counties	0.0–9.9 5 Counties
	Number	Number	Number	Number	Number	Number	Number	Number	Number	Number	Number	Number	Number
Warrants Issued	7032	1492	1697	300	3489	3543	472	442	166	1223	342	728	170
Total Sentenced	2680	696	398	64	1158	1522	205	186	65	534	183	286	63
	Percent	Percent	Percent	Percent	Percent	Percent	Percent	Percent	Percent	Percent	Percent	Percent	Percent
Warrants Issued	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00
Total Sentenced	38.11	46.65	23.45	21.33	33.19	42.96	43.43	42.08	39.16	43.66	53.51	39.29	37.06
Sentenced on plea of guilty	30.59	39.14	17.03	19.67	26.71	34.41	34.53	33.48	27.71	34.51	45.91	31.04	33.53
Tried and found guilty as charged	6.29	6.50	5.83	1.00	5.70	6.86	7.42	7.69	7.23	7.20	5.56	6.73	3.53
Tried and found guilty of lesser offense	1.18	.94	.59	.67	.75	1.61	1.27	.68	4.22	1.88	2.05	1.51	
Jury disagrees, defendent pleads guilty to lesser offense	.07	.07			.03	.08	.21	.23[1]		.08			

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[1] Punished; no record whether trial or plea.

The Same Data on a Different Basis

Considering these same figures from the point of view of their number relative to all cases (warrants issued) we find in Table IXB a somewhat greater divergence, due to the unequal percentages of those sentenced in the various cities and groups of counties. Of all cases for which warrants were issued the sentenced were 38.11 percent (entire state) 33.19 for the three cities and 42.96 for the 36 counties. St. Louis ranks high among the cities and Kansas City and St. Joseph low; while the country groups range from 37.06 to 53.51.

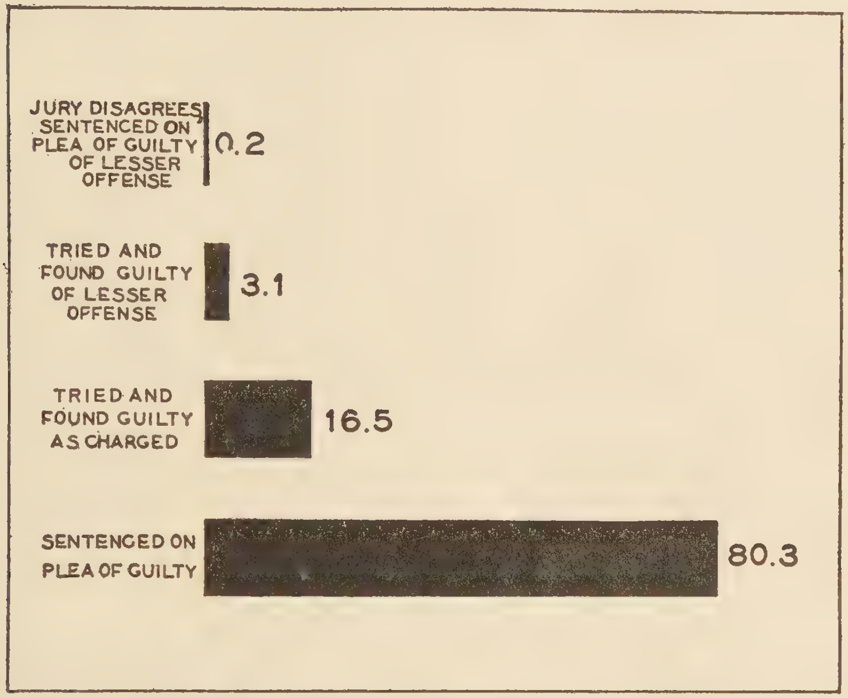

FIG 4 PERCENTAGE DISTRIBUTION OF SENTENCES ACCORDING TO TYPE OF PROCEDURE LEADING TO SENTENCE

Of all cases for which warrants were issued we have then the following summary with respect to jury trials:

	State	3 Cities	36 Counties
Sentenced on plea of guilty	30.59	26.71	34.41
Tried and found guilty as charged	6.29	5.70	6.86
Tried and found guilty of lesser offense	1.18	.75	1.61
Tried, jury disagreed, defendant pleads guilty	.07	.03	.08

While the divergence here between city and country is greater, it is not very large, in any of the categories. Especially significant here is the small percentage of those tried by jury and found guilty. Combining this latter group with those tried and acquitted we have:

	State	3 Cities	36 Counties
Tried and found guilty	7.45	6.45	8.47
Tried and acquitted	4.59	3.90	5.28
Total tried	12.04	10.35	13.75

Small Importance of Jury Trials

Actually then, of each one hundred cases in which warrants were issued, only 12 in the whole state, 10 in the cities, and 14 in the counties actually faced a jury. We have seen that the grand jury has apparently ceased to be an independent body, and is only a rubber stamp for the prosecutor. The petit jury, too, is reduced in importance. About one-eighth of all cases, about one-fifth of all cases of ascertained guilt, and about one-fourteenth of all cases not sentenced are decided by a jury, as is shown in the following:

Total warrants issued	7032
Total sentenced	2680
Total eliminated before sentence	4352
Total tried and acquitted	323 or 7.48 percent of all cases eliminated before sentence.

Liquor Cases

There is scarcely any other field of law enforcement in the United States about which there is at present so varied a state of public opinion as that of the enforcement of those laws, state and federal, which are designed to prevent the sale and use of alcoholic beverages. The data of this survey very clearly indicate this division of opinion.

The total number of liquor cases in our records is 2112. This includes only cases that were designed by the police to be felony cases, rather than misdemeanor cases. This total does not include all liquor cases handled in the three cities as felonies, but only a sufficiently large sample to make the study representative. These cases have been treated statistically in the same fashion as the other data already discussed. A "mortality table" was constructed, beginning with total warrants issued. (Tables XA and XB.) The discussion here is somewhat more limited, due to the small number of cases involved. The comparison of the major dispositions of liquor cases and those of other types is also undertaken.

Table XB shows (line B6) such a wide divergence of city and country in the matter of the percentage of cases that are disposed of in the preliminary hearing that it is scarcely worth while to con-

TABLE X-A—"MORTALITY TABLE" OF LIQUOR CASES

Number of Cases Eliminated in the Several Stages of Procedure

	Total for State				Total Three Urban Coun-ties	Total Thirty-Six Coun-ties	Counties grouped according to percentage of population living in incorporated places of 2500 or more.						
Disposition		St. Louis City	Jackson County	Buch-anan County			60.0–69.9 2 Coun-ties	50.0–59.9 3 Coun-ties	40.0–49.9 2 Coun-ties	30.0–39.9, 11 Coun-ties	20.0–29.9 5 Coun-ties	10.0–19.9 8 Coun-ties	0.0–9.9 5 Coun-ties
A. Warrants Issued	1156	155	306	35	496	660	55	63	32	224	82	172	32
B. Preliminary Hearing													
1. Discharged	32	2	10	8	20	12	1	2		5	4		
2. Disposed of as misdemeanor	412	145	257	2	404	8				2	5	1	
3. Dismissed for want of pros.	25		19	1	20	5		1		4			
4. Nolle prosequi	11			1	1	10		1		5	3	1	
5. Other dispositions	9	1	3	2	6	3	1	1		1			
6. Total	489	148	289	14	451	38	2	5		17	12	2	
C. To Grand Jury and Circuit or Pros. Attorney	667	7	17	21	45	622	53	58	32	207	70	170	32
1. No true bill													
2. No information issued	22	2			2	20					15	5	
3. Total	22	2			2	20					15	5	
D. To Circuit Court	645	5	17	21	43	602	53	58	32	207	55	165	32
1. Nolle prosequi	191		10	10	20	171	19	25	5	67	8	39	8
2. Disposed of on action of court	59	1	1	4	6	53	1	2	12	12	5	20	1
3. Tried and acquitted	22	1	3		4	18	2	3	1	4	2	6	
4. Other dispositions	116		2		2	114	1	6	5	61	10	22	9
5. Total	388	2	16	14	32	356	23	36	23	144	25	87	18

TABLE X-A—*(Continued)*

Disposition	Total for State	St. Louis City	Jackson County	Buchanan County	Total Three Urban Counties	Total Thirty-Six Counties	Counties grouped according to percentage of population living in incorporated places of 2500 or more. 60.0–69.9 2 Counties	50.0–59.9 3 Counties	40.0–49.9 2 Counties	30.0–39.9, 11 Counties	20.0–29.9 5 Counties	10.0–19.9 8 Counties	0.0–9.9 5 Counties
E. Sentence Imposed	257	3	1	7	11	246	30	22	9	63	30	78	14
1. Paroled	50			2	2	48	1			23	10	12	2
2. Appealed	28					28	10	1			1	15	1
3. Other dispositions													
4. Total	78			2	2	76	11	1		23	11	27	3
F. Sentence Executed	179	3	1	5	9	170	19	21	9	40	19	51	11
1. Committed to Penitentiary	40					40	3		2	3	6	23	3
2. Committed to Reformatory	3			2	2	1					1		
3. Committed to Jail	56			1	1	55	11	13	3	8	7	7	6
4. Committed to Workhouse													
5. Fine paid	40	3	1	1	5	35	4	4	4	10	3	10	
6. Other dispositions	40			1	1	39	1	4		19	2	11	2
7. Total	179	3	1	5	9	170	19	21	9	40	19	51	11

TABLE X-B—"MORTALITY TABLE" OF LIQUOR CASES

PERCENTAGES OF CASES ELIMINATED IN THE SEVERAL STAGES OF PROCEDURE

	Total for State				Total Three Urban Counties	Total Thirty-Six Counties	Counties grouped according to percentage of population living in incorporated places of 2500 or more						
Disposition		St. Louis City	Jackson County	Buchanan County			60.0–69.9 2 Counties	50.0–59.9 3 Counties	40.0–49.9 2 Counties	30.0–39.9, 11 Counties	20.0–29.9 5 Counties	10.0–19.9 8 Counties	0.0–9.9 5 Counties
A. Warrants Issued	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00
B. Preliminary Hearing													
1. Discharged	2.77	1.29	3.27	22.86	4.03	1.82	1.82	3.17		2.23	4.88		
2. Disposed of as misdemeanor	35.64	93.55	83.99	5.71	81.46	1.21					.89	6.10	.58
3. Dismissed for want of pros.	2.16		6.21	2.86	4.03	.76		1.59		1.79			
4. Nolle prosequi	.95			2.86	.20	1.52		1.59		2.23	3.66	.58	
5. Other dispositions	.69	.65	.98	5.71	1.21	.45	1.82	1.59		.45			
6. Total	42.21	95.48	94.44	40.00	90.93	5.76	3.64	7.94		7.59	14.63	1.16	
C. Grand Jury and Circuit or Pros. Attorney	57.79	4.52	5.56	60.00	9.07	94.24	56.36	92.06	100.00	92.41	85.37	98.84	100.00
1. No true bill													
2. No information issued	1.90	1.29			.40	3.03					18.29	2.91	
3. Total	1.90	1.29			.40	3.03					18.29	2.91	
D. Circuit Court	55.58	3.22	5.56	60.00	8.67	91.21	96.36	92.06	100.00	92.41	67.07	95.93	100.00
1. Nolle prosequi	16.52		3.27	28.57	4.03	25.91	34.35	39.68	15.63	29.91	9.76	22.67	25.00
2. Disposed of on action of court	5.10	.65	.33	11.43	1.21	8.03	1.82	3.17	37.50	5.36	6.10	11.63	3.13
3. Tried and acquitted	1.90	.65	.98		.81	2.73	3.64	4.76	3.13	1.79	2.44	3.49	
4. Other dispositions	10.03		.65		.40	17.27	1.82	9.52	15.63	27.23	12.20	12.79	28.13
5. Total	33.56	1.29	5.23	40.00	6.45	53.94	41.82	57.14	71.88	64.29	30.49	50.58	56.25

TABLE X-B—"MORTALITY TABLE" OF LIQUOR CASES—(*Continued*)

Disposition	Total for State				Total Three Urban Coun-ties	Total Thirty-Six Coun-ties	Counties grouped according to percentage of population living in incorporated places of 2500 or more.						
		St. Louis City	Jackson County	Buch-anan County			60.0–69.9 2 Coun-ties	50.0–59.9 3 Coun-ties	40.0–49.9 2 Coun-ties	30.0–39.9, 11 Coun-ties	20.0–29.9 5 Coun-ties	10.0–19.9 8 Coun-ties	0.0–9.9 5 Coun-ties
E. Sentence Imposed	22.32	1.94	.33	20.00	2.22	37.27	54.55	34.92	28.13	28.12	36.59	45.35	43.75
1. Paroled	4.33			5.71	.40	7.27	1.82			10.27	12.20	6.98	6.25
2. Appealed	2.42					4.24	18.18	1.59			1.22	8.72	3.13
3. Other dispositions													
4. Total	6.75			5.71	.40	11.52	200.0	1.59		10.27	13.41	15.70	9.38
F. Sentence Executed	15.48	1.94	.33	14.29	1.81	25.76	34.55	33.33	28.13	17.86	23.17	29.65	34.38
1. Committed to Penitentiary	3.46					6.06	5.45		6.25	1.34	7.32	13.37	9.38
2. Committed to Reformatory	.26			5.71	.40	.15					1.22		
3. Committed to Jail	4.84			2.86	.20	8.33	20.00	20.63	9.38	3.57	8.54	4.07	18.75
4. Committed to Workhouse													
5. Fine paid	3.46	1.94	.33	2.86	1.01	5.30	7.27	6.35	12.50	4.46	3.66	5.81	
6. Other dispositions	3.46			2.86	.20	5.91	1.82	6.35		8.48	2.44	6.40	6.25
7. Total	15.48	1.94	.33	14.29	1.81	25.76	34.55	33.33	28.13	17.86	23.17	29.65	34.38

sider the average of the state as a whole. The three cities eliminate 90.93 percent in the lower court, as against 5.76 percent so disposed of in the rural counties. This indicates an overwhelming tendency in the urban centers to regard liquor cases as misdemeanors, though they are technically felony cases. This is followed in the cities by the elimination of 0.40 percent by refusal of informations as against 3.03 percent in the country courts. (Line C-3). Naturally there are few left in the cities (8.67 percent) to be eliminated in the circuit court; but of these the actual elimination is 6.45 percent. (Line D-5). In the country for opposite reasons, more than half of the cases (53.94 percent) are eliminated in the circuit court. Remaining for sentence in the cities are 2.22 percent, and in the country 37.27 percent. Finally those punished by the circuit court are only 1.81 percent in the cities, 25.76 percent in the country.

It is interesting to note that Buchanan County, containing St. Joseph, a city of 78,000, is intermediate between St. Louis City and Jackson County, (populations 773,000 and 368,000 respectively), on the one hand and the 36 rural counties on the other, in nearly all the categories of this table.

The comparison of liquor cases with other cases in the following table reveals this outstanding fact: That in the cities the ratio of liquor cases coming to punishment at the hands of the circuit court is negligibly small, 1.81 percent compared with 29.49 percent for other offenses:

TABLE X-C

Disposition		Total 3 Cities	Total 36 Counties
Total Warrants Issued		Number 4985	Number 4203
Eliminated:		Percent 100.00	Percent 100.00
In preliminary hearing	liquor	90.93	5.76
	non-liquor	41.73	10.67
No information issued	liquor	.40	3.03
	non-liquor	3.15	3.36
In circuit court	liquor	6.45	53.94
	non-liquor	21.93	43.01
Paroled and appealed	liquor	.40	11.52
	non-liquor	3.70	9.00
Punished	liquor	1.81	23.76
	non-liquor	29.49	33.95

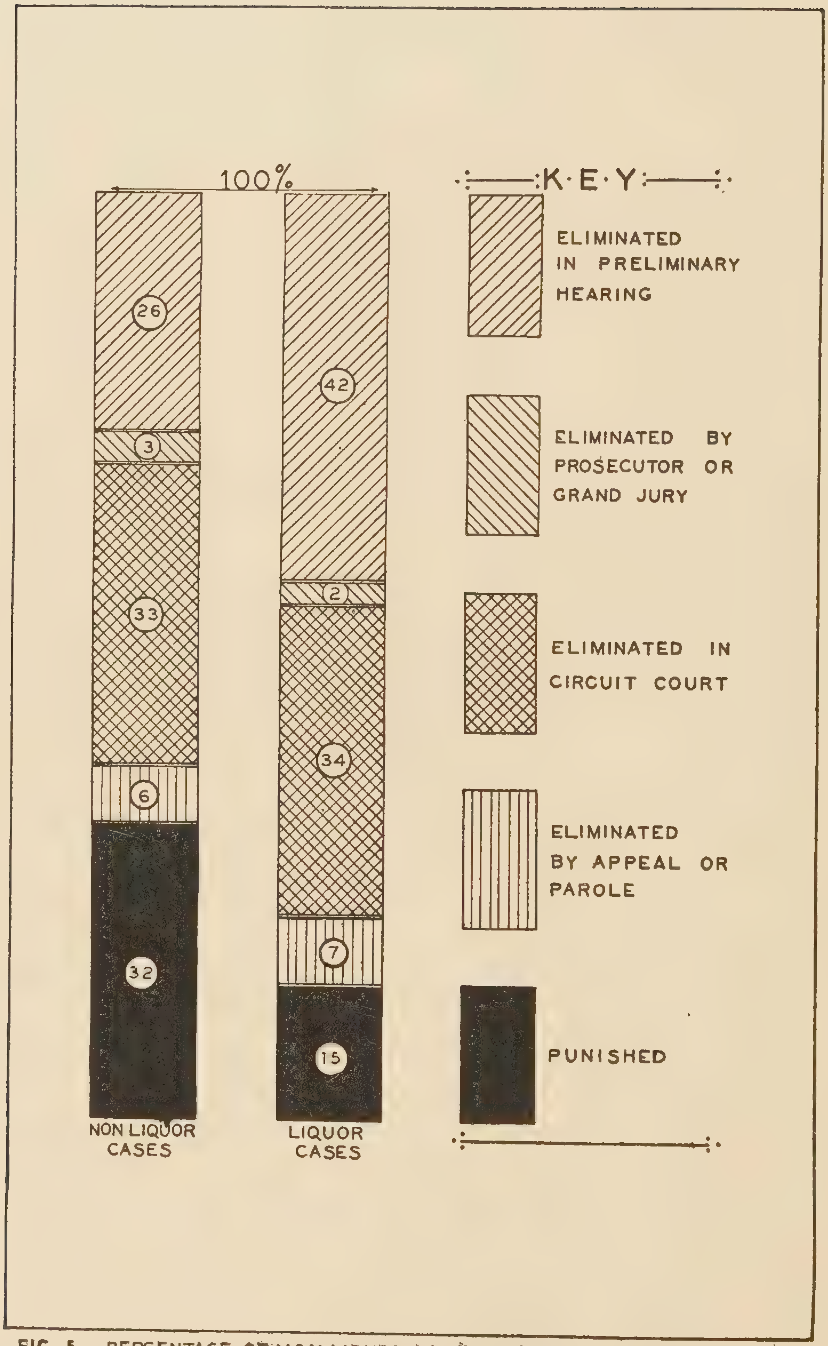

FIG 5 PERCENTAGE OF NON LIQUOR CASES AND OF LIQUOR CASES DISPOSED OF BY VARIOUS TYPES OF DISPOSITION, IN TOTAL STATE.

In the counties this disparity of liquor cases and other cases is relatively small—25.76 percent to 33.95 percent. The preliminary hearing is much more important for both kinds of cases in the cities than in the country, but in the cities liquor cases are eliminated to more than twice the proportion shown in the non-liquor cases (90.93 percent to 41.73 percent) and in the country this is reversed (5.76 percent to 10.67 percent). The preliminary hearing is therefore more important as a point of elimination of liquor cases in the country (compared with non-liquor cases) and vice versa in the cities.

Turning next to a more detailed study of the dispositions of liquor cases we shall first consider a form of elimination not touched on in the cases taken up in the mortality table, namely the refusal of warrants. Table XI shows total charges distributed with respect to the issuance and non-issuance of warrants by the circuit or prosecuting attorney. It is apparent at a glance that in the cities refusal to issue is a very important factor in elimination at this point—almost two-thirds (65.68 percent) of the 1451 cases brought in by the police in St. Louis City and Jackson County are not held by the circuit or prosecuting attorney for even a preliminary hearing. To compare city and country in this respect is unfair, because of the fact that there are no police records in the counties and the prosecutors also keep no records on this point. This is also true of the non-liquor cases in the counties (see text on page 296). The tendency to refuse warrants in liquor cases is greater in St. Louis than in Kansas City (77.76 percent as against 57.16 percent). Table XB (the general mortality table for liquor cases) reveals, as we saw, a negligible proportion of cases eliminated in the country preliminary hearing (5.76) and an overwhelming percentage in the city preliminary hearings (90.93). While Buchanan County in this respect is much nearer the type of the rural counties, its small number of cases (35) has little effect on the city total which is largely determined by St. Louis City and Jackson County which have 461 cases on which warrants were issued. Of the 90.93 percent eliminated, disposition as misdemeanors accounts for a very large share (81.46 percent). Of the remaining eliminations two dispositions—"discharged" and "dismissed for want of prosecution" are responsible for 8.06 percent.

With only 9.07 percent of all cases remaining after the preliminary hearing the eliminations in the city group after this point is reached are negligible. But in the case of the counties we find non-issuance of informations almost as important as in the non-liquor cases: and one-fourth of all the liquor cases in the counties (25.91 percent) go out on nolle pros. in the circuit court. Paroles and appeals in these cases are also significant, accounting for 11.52 percent. In punish-

TABLE XI

CASES OF LIQUOR LAW VIOLATION, CLASSIFIED BY THE ISSUANCE OR NON-ISSUANCE OF WARRANTS

Disposition	Total for State	St. Louis City	Jackson County	Buchanan County	Total Three Urban Counties	Total Thirty-Six Counties	60.0–69.9 2 Counties
	Number	Number	Number	Number	Number	Number	Number
Total Charges	2112	697	719	35	1451	661	56
	Percent	Percent	Percent	Percent	Percent	Percent	Percent
Total Charges	100.00	100.00	100.00	100.00	100.00	100.00	100.00
1. Warrants Issued	54.73	22.24	42.56		34.18	99.85	98.21
2. Warrants Refused	45.17	77.76	57.16		65.68	.15	1.79
3. No Record	.10		.28		.14		

ments also we find the rural counties approximating more closely to the practice in the case of other offenses, in that all types of punishment are represented; with commitments to jail and to penitentiary as well as fines showing the largest shares (8.33, 6.06 and 5.30 percents respectively).

It is clear then, from these selected items that the treatment of liquor cases is not so severe as that of other offenses as a whole and that in the city it is very much less severe than in the country.

Relationship of Types of Sentences to all Types of Charges

Leaving the discussion of liquor exclusively we pass to a consideration of all types of charges in their relationship to sentences imposed. There are several qualifications attached to the discussion of this topic. In the first place these are sentences imposed, not sentences executed; that is, they include paroled and appealed cases as well as cases wherein other modifications of sentence take place. These figures present the extreme judgment of the courts unmodified by leniency or other considerations. In the second place, these groups of charges are compounded of various individual charges, and there is necessarily some variability within the group; *i.e.* murder in the first degree naturally takes a severer punishment than other homicides. To use the individual charges would reduce the numbers of cases for each charge to such a point that they would be too small to be statistically significant. In the third place some groups of offenses—like liquor cases in the three cities (totalling only 11 sentences) are too small for significant subdivision, though the smallness of the total number sentenced is in itself a very important fact. In the fourth place the nature of the pleas is left out of consideration.

A Summary of Distribution of Sentences

Sentence	Percent	
	Cities	Counties
Penitentiary	51.50	55.60
Penitentiary and fine		.23
Reformatory	.34	4.58
Workhouse	20.79	
Workhouse and fine	.51	
Jail	12.92	13.91
Jail and fine	.60	5.43
Death	.26	.11
Fined only	13.09	19.85
Deferred generally		.28
Total	100.01	99.99

TABLE XII

Percentage Distribution of Charges by Sentences Imposed

Base of Percentage is Total Number of Each Class of Charges Sentenced

Type of sentence	Total number of charges		Penitentiary		Penitentiary and fine		Reformatory		Workhouse		Workhouse and fine		Jail		Jail and fine		Death		Fined only		Sentence deferred generally	
Groups of charges	Urban counties	Rural counties	Urban counties	Rural counties	Urban counties	Rural counties	Urban counties	Rural counties	Urban counties	Rural counties	Urban counties	Rural counties	Urban counties	Rural counties	Urban counties	Rural counties	Urban counties	Rural counties	Urban counties	Rural counties	Urban counties	Rural counties
All charges	1169	1768	602	983		4	4	81	243		6		151	246	7	96	3	2	153	351		5
Homicide	48	56	81.25	85.71					4.17				6.25	5.36	2.08	1.79	6.25	3.57		3.57		
Rape	14	66	71.43	74.24				4.55					21.43	13.64					7.14	7.58		
Assaults	44	166	43.18	36.14				.60	18.18		2.27		18.18	10.84	6.82	5.42			11.36	46.99		
Carrying concealed weapons	273	168	5.49	19.04			.37	2.38	28.94				24.18	20.83		5.36			41.03	52.38		
Burglary	227	253	72.25	1.42			.44	9.09	20.70				6.17	4.74	.44	.79				2.77		1.19
Robbery	209	84	89.95	88.09			.48	5.95	5.26				3.35	4.76					.96	1.19		
Larceny	183	304	54.64	59.54				8.88	30.05				13.66	15.46		5.59			1.64	10.53		
Embezzlement and fraud	9	15	44.44	93.33					44.44				11.11							6.67		
Forgery	66	198	54.55	81.31			1.52	3.03	30.30				12.12	8.59					1.52	7.07		
Sodomy	11	4	81.82	100.00					9.09				9.09									
Auto stealing	19	50	26.32	72.00				12.00	63.16				10.53	4.00		10.00				2.00		
Mixed crimes against propty	6	11	66.67	54.55				27.27	16.67				16.67	18.18								
Mixed crimes against persons		6		33.33										33.33		16.67				16.67		
Mixed crimes against property and persons		10		100.00																		
All other crimes	49	131	16.33	34.35		3.05		1.53	6.12		10.20		20.41	17.56		6.11			46.94	35.88		1.53
Liquor violations	11	221	9.09	23.08			.45	.45					18.18	28.51	18.18	15.38			54.55	32.58		
Mixed liquor violations		23		17.39										30.43		43.48				8.70		
Mixed liquor and persons		2												100.00								
Percentage of all charges	100.00	100.00	51.50	55.60		.23	.34	4.58	20.79		.51		12.92	13.91	.60	5.43	.26	.11	13.09	19.85		.28

These figures reveal what was referred to in the discussion of Table VI on page 287, namely, that of all these sentences for felonies, slightly over one-half involve imprisonment in the penitentiary; that a negligible percentage are sentenced to death (and none executed); that the reformatory is unimportant as a place of punishment; and that, finally, the workhouse, jail, and fines are quite important.

Scrutiny of the columns of Table XII classifying charges by sentences imposed, indicates that the several groups of offenses show (as we expect) varying applications of any one type of sentence.

In penitentiary sentences we have a range in the cities from 5.49 percent for carrying concealed weapons, to 89.95 for robbery. Five types of charges carry with them more than 70 percent penitentiary cases, in this order: robbery, sodomy, homicide, burglary and rape. In the country courts nine groups of offenses result in from 70 percent to 100 percent penitentiary sentences. These are sodomy, mixed offenses against property and person, embezzlement and frauds, robbery, homicide, burglary, forgery, rape and auto stealing. Carrying concealed weapons is a common crime but leads only infrequently (19.04 percent) to the penitentiary; and liquor cases are numerous, but not severely punished. In general these figures tend to establish a noticeably greater severity of sentence in the country courts.

Reformatory sentences are little used in the cities, but are more popular in country courts. Of the nine most numerous charges, burglary and larceny lead here, with 9.09 and 8.88 percent. Auto stealing and combination crimes against property have higher percentages but are too infrequent to be significant.

St. Louis alone has a workhouse; but the percentages of workhouse sentences given in Table XII are on the base of the figures of all three cities, and probably reflect a less frequent use of this type of institution than would exist if each city had one. Since St. Louis has 699 out of 1169 urban sentences, the percentages for St. Louis alone would be on the average well over twice what they are for the three cities. The numerically important groups are carrying concealed weapons (28.94 percent to the workhouse), burglary (20.70), larceny (30.05), forgery (30.30). Carrying concealed weapons is also the crime least visited with penitentiary imprisonment in the cities. About one sentence in eight involves imprisonment in jail in the city, and nearly one in five in the country. The high percentages for carrying concealed weapons, liquor cases, and assaults, are to be expected; but homicides and rape have percentages that seem high, considering the supposed gravity of these offenses (6.25 and 21.43 in the cities; and 5.36 and 13.64 in the country). Finally the use of fines alone is notable in the cities only for carrying concealed weapons, (disregarding the 11 liquor cases) 112 cases, 41.03 percent. In the country this crime (88 cases) shows 52.38 percent of the punishments; assaults (78 cases) 46.99 percent; liquor violations (72 cases) 32.58 percent.

Turning now to the horizontal scrutiny of the table we may note some striking differences between city and country in the imposition of individual groups of punishments. Carrying concealed weapons is punished by more than three times as many penitentiary sentences in the country as in the city; but the country courts fine more violations of this law than do the city courts. Assaults also are very much more commonly fined in the country than in the city (46.99 to 11.36 percent). Larceny is another example of this tendency (10.53 to 1.64 percent). Sentenced cases of forgery are exactly three times as common in the country as in the city (198 to 66) and are much more likely to lead to the penitentiary in the country (81.31 to 54.55 percent). The same may be said in general of auto stealing.

The punishment of liquor violations has already been discussed in an earlier statement (p. 311).

PLEAS AND SENTENCES

The relationship between the type of plea offered and the sentences imposed is set forth in Table XIII. In this table the total number of each kind of plea is given in the two left hand columns. Then, reading horizontally, come the percentages which each type of sentence contributes to the total sentences for the given plea. *Eg.*, the first percentage in the third column is 80.28; that means that of the 213 "not guilty" pleas in the cities, 80.28 percent were followed by penitentiary sentences. The row which is designated "percentage of all pleas" (at the bottom of the table) contains the percentages which each type of sentence contributes to the total of all sentences for all pleas. It represents the average frequency of the particular type of sentence. The importance of this relationship will occur to any one familiar with our criminal procedure. The aim of the criminal is to escape punishment or—failing that—to secure as light a punishment as possible. If by making a plea of guilty—"throwing himself on the mercy of the court"—the defendant can secure a lighter sentence, it is good policy to do so. Sometimes a prosecuting attorney with a case in which the evidence is none too strong, or facing an over-crowded docket, will agree with the defendant's attorney to let him plead guilty to a lesser offense, or to a lesser degree of the offense charged. It is only by studying large numbers of cases that such a tendency can be shown to exist or not to exist. In our discussion of non-liquor cases only the sentences involving penitentiary, reforma-

TABLE XIII-A

Percentage Distribution of Pleas by Sentences Imposed

(A) Cases Not Involving Liquor Violations

Base of Percentage is Total Number of Each Class of Pleas in Cases Where Sentence Was Imposed

Type of sentence	Total number of charges		Penitentiary		Penitentiary and fine		Reformatory		Workhouse		Workhouse and fine		Jail		Jail and fine		Death		Fined only		Sentence deferred generally	
Groups of charges	Urban counties	Rural counties	Urban counties	Rural counties	Urban counties	Rural counties	Urban counties	Rural counties	Urban counties	Rural counties	Urban counties	Rural counties	Urban counties	Rural counties	Urban counties	Rural counties	Urban counties	Rural counties	Urban counties	Rural counties	Urban counties	Rural counties
All pleas	1158	1522	601	928		4	4	80	243		6		149	174	5	52	3	2	147	277		5
Not guilty	213	293	80.28	66.89				1.37	3.76		.47		7.51	7.17	2.35	4.78	.47	.68	5.16	19.11		
Guilty as charged	493	842	41.99	62.11			.20	7.72	19.07		.81		12.58	9.86		2.97			25.35	16.75		.59
Guilty to lesser offense or degree	148	174	34.46	42.53				5.57	56.76				8.11	20.69		4.60			.68	26.44		
Not guilty then guilty as chgd.	163	136	71.17	73.53			.61	.74	7.98				18.40	11.03		1.47			1.84	13.24		
Not guilty then guilty to lesser offense	121	56	38.02	48.21					35.54		.83		20.66	33.93		1.79			4.96	16.07		
Not guilty then guilty then not guilty	2	1	50.00														50.00			100.00		
Guilty as ch'g'd then not guilty then guilty to lesser offense.	3	3	66.67	100.00					33.33													
Guilty then not guilty		1														100.00						
Plea unknown . . .	15	16	46.67	31.25		25.00	13.33						26.67			6.25	6.67		6.67	37.50		
Percentage of all pleas	100.00	100.00	51.90	60.97		.26	.35	5.26	20.98		.52		12.87	11.43	.43	3.42	.26	.13	12.69	18.20		.33

TABLE XIII-B

Percentage Distribution of Pleas by Sentences Imposed

(B) Cases of Liquor Violations

Base of Percentage is Total Number of Each Class of Pleas in Cases Where Sentence Was Imposed

Type of sentence	Total number of charges		Penitentiary		Penitentiary and fine		Reformatory		Workhouse		Workhouse and fine		Jail		Jail and fine		Death		Fined only		Sentence deferred generally	
Groups of charges	Urban counties	Rural counties	Urban counties	Rural counties	Urban counties	Rural counties	Urban counties	Rural counties	Urban counties	Rural counties	Urban counties	Rural counties	Urban counties	Rural counties	Urban counties	Rural counties	Urban counties	Rural counties	Urban counties	Rural counties	Urban counties	Rural counties
All pleas	11	246	1	55				1					2	72	2	44			6	74		
Not guilty	4	70		38.57										20.00	50.00	20.00			50.00	21.43		
Guilty as ch'g'd	1	114		22.81				.69						36.84		14.04			100.00	25.44		
Guilty to a lesser offense or degree	2	38		2.63										21.05		26.32			100.00	50.00		
Not guilty then guilty as chgd.	1	18	100.00	5.56										38.89		5.56				50.00		
Not guilty then guilty to lesser offense	3	4											66.67	25.00		50.00			33.33	25.00		
Plea unknown		2														50.00				50.00		
Percentage of all pleas	100.00	100.00	9.09	22.36				.41					18.18	29.27	18.18	17.89			54.55	30.08		

tory, workhouse, jail, jail and fine, and fine only, will be discussed, and only the first five types of pleas, because only these groups are numerically significant from a statistical standpoint; they include 1144 of the 1158 cases in the cities and 1511 of the 1522 cases in the counties. Liquor cases in the cities (11 cases in all) are completely omitted from the discussion but not from the table, and in the counties only penitentiary, jail, jail and fine, and fined only, cases. These include 245 of the 246 cases. The same five pleas as before will be included in this discussion.

Considering then the non-liquor cases, we shall take up the punishments in the order in which they appear in the table.

In the cities, it is obvious, the highest percentage of penitentiary sentences accompanies the plea of not guilty. To change this plea to guilty as charged has a slight effect in reducing the chances of a penitentiary sentence. An original plea of guilty reduces the probability of the penitentiary by just about one-half (80.28 to 41.99). Of course to plead guilty to a lesser offense involves usually a lighter sentence; often the plea accepted is that of guilty of a misdemeanor, which of course would not imply a penitentiary sentence.

In the counties, on the other hand, the maximum percentage of penitentiary sentences follows the acceptance of a plea of guilty of the offense charged after an original plea of not guilty. Nor does an original plea of guilty help the offender as it does in the city. The ratio here is only 66.89 for not guilty to 62.11 for guilty as charged. Lesser offense pleas have not the same efficacy in reducing punishment as they have in the cities.

Reformatory sentences in the cities are negligible (only 4). In the counties the plea of not guilty either alone, or with a change to guilty as charged tends to reduce the chances of arrival at this institution, which in many respects holds out better hopes for early discharge than the penitentiary. The pleas most likely to result in this sentence are guilty as charged, or guilty of a lesser offense.

The workhouse is used, as the reader will recall, only in St. Louis. The figures for the workhouse are however spread over the three cities and so create a false impression. Nevertheless, it is apparent that pleas of not guilty, even when changed to guilty of the offense charged are very unlikely to result in a workhouse sentence. Naturally pleas of guilty to a lesser offense are more effective in producing workhouse sentences. The plea of guilty to the offense charged occupies an intermediate position in this group.

The jail sentence (without fine) in the cities results least often from a plea of not guilty, and most often from a plea of not guilty changed to guilty of a lesser offense; but the other change of plea is nearly as effective. Pleading guilty of a lesser offense is slightly more likely to result in this punishment, and an original plea of guilty stands about in the middle of the scale.

In the counties not guilty shows the lowest, and not guilty changed to guilty of a lesser offense the highest percentage. Guilty of a lesser offense is almost halfway between these two, and the other two pleas fall in the lower half.

Jail and fine is a type of sentence rare in cities, and not very numerous in the counties. The percentages are so small here that it is not worth comment.

Fines are however, a relatively important type of sentence, more used in the country than in the cities. Guilty of a lesser offense in the cities leads only slightly to this sentence; guilty as charged shows the highest percentage, but a plea changed to guilty as charged is oddly enough not important at all.

In the counties the variation in the use of this sentence is not so extreme as in the cities; guilty to a lesser offense leads, and not guilty, then guilty to the offense charged is least.

In the case of liquor violations in the counties, four classes of sentences, penitentiary, jail, jail and fine, and fine only, are considered.

In the penitentiary group not guilty and guilty as charged are very much greater than either of the other two pleas. In the jail group, not guilty then guilty as charged leads, and guilty as charged is a close second; then at some distance, but close together come the other three pleas.

In the jail and fine group the numerically important classes are the first three (the last two are each 1 case). Guilty of a lesser offense is the surest way of securing this sentence, and an original plea of guilty the least certain. The fine only class falls into two groups (the fifth plea is negligible,—one case); the third and fourth high and the first two low.

THE DISPOSITIONS OF CASES ACCORDING TO CHARGES

It is not only important to consider what proportion of cases involving each type of charge is sentenced, but also to know of the disposition of those cases that are eliminated along the way. In Table XIV we find a series of very condensed mortality tables. These involve only the three principal groups of eliminations; (a) in the preliminary hearing, (b) in the stage of the issuance of informations and indictments, and (c) in the circuit court. Sentences also are included, though they have been discussed in this connection, and in much greater detail (see Table XIII, pp. 315-316).

TABLE XIV

Condensed Mortality Table by Groups of Charges, For the Three Urban Counties and Thirty-Six Rural Counties

Base of Percentage is the Number of Warrants Issued

Groups of Charges	Grand Total of All Charges		A Homicide		B Rape		C Assaults		D Carrying Concealed Weapons		E Burglary		F Robbery		G Larceny		H Embezzlement and Frauds		I Forgery	
	Urban counties	Rural counties	Urban counties	Rural counties	Urban counties	Rural counties	Urban counties	Rural counties	Urban counties	Rural counties	Urban counties	Rural counties	Urban counties	Rural counties	Urban counties	Rural counties	Urban counties	Rural counties	Urban counties	Rural counties
Number of charges..........	6310	4206	174	152	164	224	347	468	673	299	551	462	773	189	934	652	250	147	284	383
Number of warrants issued....	3985	4203	120	152	107	224	257	468	517	299	466	462	599	188	683	651	202	146	219	383
Percent of warrants issued.....	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00
Percent eliminated preliminary hearing..................	47.85	9.90	28.33	6.58	54.21	12.05	59.53	11.97	29.79	7.02	26.82	9.09	29.88	13.30	52.71	10.91	74.75	13.70	44.29	99 10.09
Percent informations refused or no bill...................	2.81	3.31	2.50	1.32	2.80	4.91	2.33	4.49	4.84	2.68	3.43	2.38	2.17	4.26	2.64	2.76	.99	3.42	2.28	47 3.37
Percent eliminated in Circuit Court....................	20.00	44.72	29.17	55.26	29.91	53.57	21.01	48.08	12.57	34.11	21.03	33.77	33.05	37.76	17.86	39.63	19.80	72.60	23.29	33.94
Percent sentenced...........	29.34	42.07	40.00	36.84	13.08	29.46	17.12	35.47	52.80	56.19	48.71	54.76	34.89	44.68	26.79	46.70	4.46	10.27	30.14	51.70

Group of Charges	K Sodomy		L Auto Stealing, etc.		M Mixed Charges Against Property Only		N Mixed Charges Against Persons Only		O Mixed Charges Against Property and Persons		R All Other Charges Exclusive of Liquor Violations)		J Violations of Liquor Laws		P Mixed Charges of Violating Liquor Laws Only		Q Mixed Charges Violating Liquor Law and Offenses Against Persons			
	Urban counties	Rural counties	Urban counties	Rural counties	Urban counties	Rural counties	Urban counties	Rural counties	Urban counties	Rural counties	Urban counties	Rural counties	Urban counties	Rural counties	Urban counties	Rural counties	Urban counties	Rural counties	Urban counties	Rural counties
Number of charges..........	28	17	81	83	18	26	7	8	3	16	572	419	1450	609	1	49		3		
Number of warrants issued....	23	17	52	83	17	26	6	8	2	16	219	419	495	609	1	49		3		
Percent of warrants issued.....	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00		100.00		
Percent eliminated preliminary hearing..................	30.43	29.41	32.69	8.43	35.29	7.69	83.33		50.00		49.77	11.93	90.91	5.75	100.00	6.12				
Percent informations refused or no bill...................	4.35	5.88	9.62	3.61				12.50			5.94	2.10	.40	3.78		2.04				
Percent eliminated in Circuit Court....................	17.39	41.18	21.15	27.71	29.41	50.00	16.67	12.50	50.00	37.50	21.92	53.70	6.46	54.19		44.90		33.33		
Percent sentenced...........	47.83	23.53	36.54	60.24	35.30	42.31		75.00		62.50	23.37	31.27	2.22	36.29		46.94		66.67		

A basis for the comparison of this mass of figures is found in the first block of the Table, "Grand Total of all Charges." Here we have the averages for the two classes of communities—cities and counties. To repeat what was said above (p. 282) in the discussion of the general mortality tables, both counties and cities show a very small percentage of cases disposed of by the refusal of the prosecutor to file an information, or, in the cities, of the Grand Jury to return a true bill. Here the resemblance of urban and rural ends. The thirty-six counties eliminate about one-fifth as large a proportion of cases in the preliminary hearing as do the cities; and over twice as many in the circuit court; but they sentence over half again as many cases.

Naturally then, we should expect these differences between urban and rural to show all the way through this table, when the two masses of cases are sorted according to charges. This variability will be treated in Table XV.

Table XV is an analysis of the material of Table XIV and shows the rank, or order in which each of twelve groups of charges falls. These groups are those in which there are more than fifty cases in both counties and cities. The six groups omitted here total only 167 cases altogether, (out of 10,516 cases in the whole state) and their omission is hence statistically justified, as they constitute only 1.6 percent of the whole. The rankings are made by disposition, subdivided by cities and counties. The highest rank is 12, the lowest is 1.

ELIMINATIONS IN THE PRELIMINARY HEARING

In the Cities.

Maximum percentage eliminated, 90.91
Minimum percentage eliminated, 26.82
Average percentage eliminated for all charges, 47.85 (See Table XIV).

This average falls between the 6th and 7th rank; *i.e.* the 6th charge is just below and the 7th just above this average. J (liquor cases) is the highest and E (burglary) the lowest. Aside from the highest percentage, which is 16 percent greater than the second highest, these charges are pretty evenly divided.

In the Counties.

Maximum percentage eliminated, 13.70
Minimum percentage eliminated, 5.75
Average percentage eliminated for all charges, 9.90 (See Table XIV).

TABLE XV

Charges Ranked by Their Percentages in the Mortality Table

(A) Arranged in the Alphabetical Order (Except Liquor Cases)

	Preliminary Hearing		Informations		Circuit Court		Sentenced	
	Urban Counties	Rural Counties	Urban Counties	Rural Counties	Urban Counties	Rural Counties	Urban Counties	Rural Counties
A. Homicide	2	2	6	1	10	11	10	6
B. Rape, etc	9	10	8	12	11	8	3	2
C. Assaults	10	9	5	11	5	7	4	4
D. Carrying concealed weapons	3	3	10	3	2	4	12	11
E. Burglary etc	1	5	9	2	6	2	11	10
F. Robbery	4	11	3	10	12	5	8	7
G. Larceny etc.	8	6	7	4	3	6	6	8
H. Embezzlement and frauds	11	12	2	7	4	12	2	1
I. Forgery, etc	6	7	4	6	9	3	7	9
L. Auto stealing, etc	5	4	12	8	7	1	9	12
R. All other charges (exclusive of liquor violations)	7	8	11	5	8	9	5	3
J. Violations of liquor laws	12	1	1	9	1	10	1	5

TABLE XV—(*Continued*)

(B) Arranged in the Order of Ranks

Preliminary Hearing						No Information					
Urban Counties			Rural Counties			Urban Counties			Rural Counties		
Charge	Percentage	Rank	Charge	Percentage	Rank	Charge	Percentage	Rank	Charge	Percentage	Rank
J	90.91	12	H	13.70	12	L	9.62	12	B	4.91	12
H	74.75	11	F	13.30	11	R	5.94	11	C	4.49	11
C	59.53	10	B	12.05	10	D	4.84	10	F	4.26	10
B	54.21	9	C	11.97	9	E	3.43	9	I	3.78	9
G	52.71	8	R	11.93	8	B	2.80	8	L	3.61	8
R	49.77	7	I	10.97	7	G	2.64	7	H	3.42	7
I	44.29	6	G	10.91	6	A	2.50	6	I	3.39	6
L	32.69	5	E	9.09	5	C	2.33	5	B	3.10	5
F	29.88	4	L	8.43	4	I	2.28	4	G	2.76	4
D	29.79	3	D	7.02	3	F	2.17	3	D	2.68	3
A	28.33	2	A	6.58	2	H	.99	2	E	2.38	2
E	26.82	1	J	5.75	1	J	.40	1	A	1.32	1

This average falls between the 5th and the 6th rank. H (embezzlement and frauds) is the highest, and J (liquor cases) the lowest. The percentages are evenly distributed below the average and evenly distributed above, but the average difference between two adjacent percentages is greater below than above.

In comparing city and country the most striking fact is that J (liquor cases) is the highest in the cities and lowest in the counties. With one exception however [F (robbery)] the difference between the rank of a charge in the first column and its rank in the second column is slight, being mostly only one. In short [excepting J and F (liquor and robbery)], preliminary hearings in city and country tend to regard these major crimes as of about the same relative seriousness. The lower the rank here, the higher the judgment of the seriousness of the offense, as we are considering only eliminations in the preliminary hearings.

ELIMINATIONS BY REFUSAL TO FILE AN INFORMATION OR BY "NO BILLS"

In the Cities.

Maximum percentage eliminated, 9.62

Minimum percentage eliminated, 0.40

Average percentage eliminated for all charges, 2.81 (See Table XIV).

This average falls between the 8th and 9th ranks. L (auto stealing) has the highest and J (liquor cases) the lowest rank. The percentages below the mean are much more closely crowded together than above.

In the Counties.

Maximum percentage eliminated, 4.91

Minimum percentage eliminated, 1.32

Average percentage eliminated for all charges, 3.31 (See Table XIV).

The average falls between the 5th and 6th ranks. The distribution is less crowded below than above the average.

In this type of elimination, while city and country averages are close together, the judgment as to the relative seriousness of the offenses differs widely, as is indicated by the considerable average difference (5.3) between ranks of the same charge in city and country. For example, city prosecutors are more likely to drop cases of auto stealing, miscellaneous crimes, carrying concealed weapons, and burglary; while their colleagues in the rural counties drop cases of rape, assaults, robbery, liquor, auto stealing, embezzlement, and forgery, with more than average frequency.

In the Cities.

Maximum percentage of elimination, 33.05
Minimum percentage of elimination, 6.46
Average percentage of elimination for all charges, 20.00 (See Table XIV).

The average falls between the 4th and 5th ranks. F (robbery) has the highest and J (liquor cases) the lowest rank. Of course the percentages in this type of eliminations are affected vitally by the percentages of earlier eliminations, and the percentages of cases sentenced. The judgment as to relative seriousness is not so clearly shown here by the ranks, as in the first stage (preliminary hearing). The same reasoning holds with respect to the second stage, though not with equal force as here.

In the Counties.

Maximum percentage of elimination, 72.60
Minimum percentage of elimination, 27.71
Average percentage of elimination for all charges, 44.72 (See Table XIV).

The average falls between the 6th and 7th ranks. These generally higher percentages are correlated with the lower percentages in the preliminary hearing. The highest percentage is that of H (embezzlement and frauds), the lowest that of L (auto stealing). The range here is somewhat larger absolutely, and smaller, relatively, than in the cities. The difference between ranks for individual charges averages 4.3 as between city and county.

CASES SENTENCED

In the Cities.

Maximum percentage sentenced, 52.80
Minimum percentage sentenced, 2.22
Average percentage sentenced for all charges, 29.34 (See Table XIV).

The average falls between the 6th and 7th ranks. D (carrying concealed weapons) has the highest and J (liquor cases) the lowest percentage. A (homicides) ranks high (10th) but B (rape) and C (assaults) low, (3rd and 4th). E (burglary) 11th, L (auto stealing) 9th, F (robbery) 8th, and I (forgery) 7th, are also above the average. The distribution of percentages is absolutely and relatively a large one.

In the Counties.

Maximum percentage sentenced, 60.24
Minimum percentage sentenced, 10.27

TABLE XV—(*Continued*)

(B) Arranged in the Order of Ranks

Circuit Court						Sentenced					
Urban Counties			Rural Counties			Urban Counties			Rural Counties		
Charge	Percentage	Rank	Charge	Percentage	Rank	Charge	Percentage	Rank	Charge	Percentage	Rank
F	33.05	12	H	72.60	12	D	52.80	12	L	60.24	12
B	29.91	11	A	55.26	11	E	48.71	11	D	56.19	11
A	29.17	10	J	54.19	10	A	40.00	10	E	54.17	10
I	23.29	9	R	53.70	9	L	36.54	9	I	51.70	9
R	21.92	8	B	53.57	8	F	34.89	8	G	46.70	8
L	21.15	7	C	48.08	7	I	30.14	7	F	44.68	7
E	21.03	6	G	39.63	6	G	26.79	6	A	36.84	6
C	21.01	5	F	37.76	5	R	23.37	5	J	36.29	5
A	19.80	4	D	34.11	4	C	17.12	4	C	35.47	4
G	17.86	3	I	33.94	3	B	13.08	3	R	31.27	3
D	12.57	2	B	33.77	2	H	4.46	2	B	29.46	2
J	6.46	1	L	27.71	1	J	2.22	1	H	10.27	1

Average percentage sentenced for all charges, 42.07 (See Table XIV).

The mean falls between the 6th and 7th ranks. L (auto stealing) is highest, and H (embezzlement and frauds) lowest. Above the average are also D (carrying concealed weapons), 11th; E (burglary) 10th; I (forgery), 9th; C (larceny), 8th; and F (robbery), 7th.

Whatever the differences between city and country in the disposition at the several stages, both have in general the tendency of ranking crimes in the same order (approximately) when it comes to sentencing. This is shown by the fact that the average difference of ranks is only 1.8, as between city and country.

In conclusion of this whole matter, it is obviously true that the wise criminal should pick his crime with great care and the place of commission of it with some degree of caution, though the latter is not so important as the former. We see in the foregoing section evidence that the difference in importance of the several stages of procedure as between city and country, extends in varying degrees to the separate groups of crimes.

Time Elapsing in Judicial Procedure

The "law's delays" are a common subject of discussion in the study of criminal justice. The belief that delay tends to decrease the chances of punishment is widely held. The object of the following summary of findings is to secure whatever intimation our figures afford with respect to these important matters.

Four time intervals were measured from the data in the questionnaires on individual cases:

Interval A. From date of arrest to date of issuing of information or indictment.

Interval B. From date of issuing of information or indictment to date set for trial.

Interval C. From date set for trial to date of final disposition of the case—either by some action freeing the prisoner, or by his commitment to an institution.

Interval D. From date of arrest to date of final disposition.

The time intervals were calculated by months and days; *i.e.* from January 1st to February 10th would be called one month and ten days; and a month was arbitrarily considered to be thirty days in length. This would make the time interval cited above forty days. This method involves a slight inaccuracy, since an average month in a non-leap-year is 30.42 days long. But since the measurement was accurate up to 30 days (or 28 for a February) the percentage of error is about one in seventy-five.

The time intervals have been summarized by the method of medians instead of by arithmetic averages. The median may be defined as that value below which one-half of the cases fall. To give a concrete illustration:

In St. Louis City there were 696 cases (not including liquor cases) that were sentenced. Of these 696 cases 348 (one-half of 696) had a complete duration of 52 days or less. In the briefer form, the median is 52 days.

The advantage of the median over the mean or arithmetic average (commonly called "the average") is that it is not so greatly influenced as is the latter by the size of the extreme cases, nor by their distance from the central position of the distribution. It is also somewhat easier to calculate (with the arrangement of figures used in our tabulation) than the mean would be.

One handicap under which this part of our investigation labors is that it was not always possible to ascertain the dates defining these four periods. They were frequently not to be found in the records. Hence we seldom have exactly the same identical cases in each of the four time interval groups for any type of disposition. Sometimes the number of cases for which time intervals could be calculated was too small to give the medians any meaning whatever.

After these preliminary statements we pass next to the consideration of the figures themselves.

We shall deal first with the question whether there is any relation between the type of disposition and the lengths of the time intervals. Table XVI contains the summary of these facts.

The dispositions considered in Table XVI are:

Eliminated in the preliminary hearing.
Circuit Court—eliminated by nolle prosequi.
Circuit Court—eliminated by action of the court.
Circuit Court—eliminated, acquittal after trial.
Circuit Court—eliminated in other ways.
Circuit Court—sentenced (including those who were later paroled or granted a new trial).

Only the time interval D was calculated for cases eliminated in the preliminary hearing, because the terminus of each of the other three intervals falls in the circuit court procedure. What we have in this table then is a comparison of the total length of time in cases eliminated in preliminary hearings contrasted with the various intervals of time in cases that passed on to the circuit court.

For each of the three urban counties and for each of the groups of rural counties three items are given as indicated in the column headings: Total cases of the particular disposition; total cases for

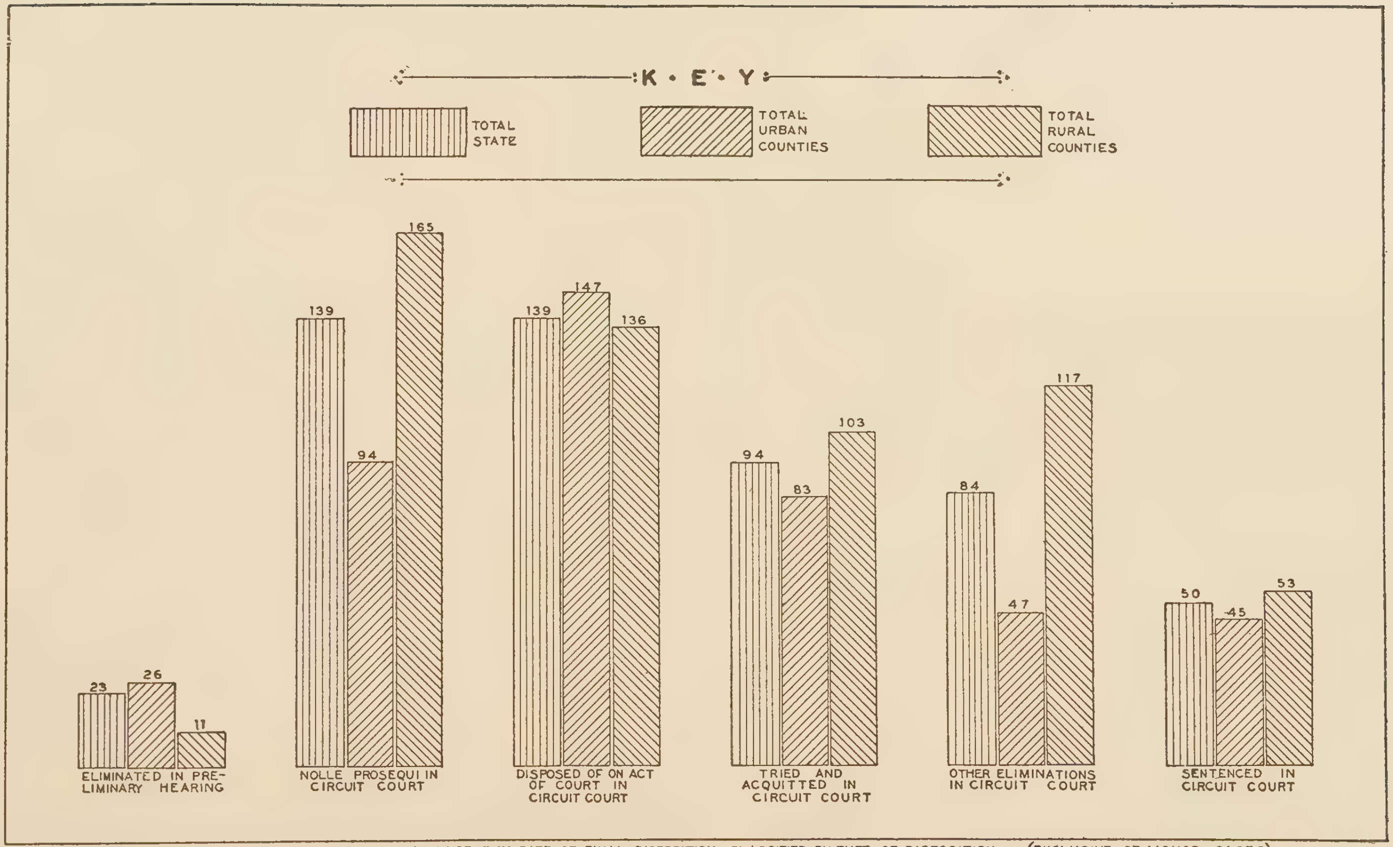

FIG. 6 MEDIAN TIME INTERVAL IN DAYS FROM DATE OF ARREST TO DATE OF FINAL DISPOSITION, CLASSIFIED BY TYPE OF DISPOSITION. (EXCLUSIVE OF LIQUOR CASES).

TABLE XVI

Summary of Median Time Intervals, Classified by Certain Types of Dispositions

Non-Liquor Cases

	1 Total State			2 Total Urban			3 Total Rural			4 St. Louis City			5 Jackson County			6 Buchanan County		
	Total in Disposition	Total Intervals Recorded	Median Interval in Days	Total in Disposition	Total Intervals Recorded	Median Interval in Days	Total in Disposition	Total Intervals Recorded	Median Interval in Days	Total in Disposition	Total Intervals Recorded	Median Interval in Days	Total in Disposition	Total Intervals Recorded	Median Interval in Days	Total in Disposition	Total Intervals Recorded	Median Interval in Days
INTERVAL A Disposition in Circuit Court																		
1. Nolle Prosequi	1106	890	**28**	405	266	**24**	701	624	**30**	102	100	**24**	271	134	**19**	32	32	**49**
2. Disposed of on action of court	251	209	**32**	63	56	**30**	188	153	**33**	37	35	**20**	9	4	**2**	17	17	**57**
3. Tried and acquitted	323	290	**29**	136	116	**25**	187	174	**31**	83	83	**24**	49	29	**24**	4	4	**60**
4. Other eliminations	609	400	**28**	161	86	**18**	448	314	**31**	82	60	**20**	77	26	**12**	2	0	—
5. Sentenced	2680	2347	**17**	1158	978	**15**	1522	1369	**19**	696	692	**17**	398	228	**9**	64	58	**19**
INTERVAL B Disposition in Circuit Court																		
1. Nolle Prosequi	1106	666	**31**	405	303	**20**	701	363	**39**	102	67	**35**	271	208	**14**	32	28	**27**
2. Disposed of on action of court	251	131	**51**	63	52	**36**	188	79	**61**	37	32	**43**	9	6	**8**	17	14	**33**
3. Tried and acquitted	323	304	**38**	136	128	**35**	187	176	**39**	83	83	**44**	49	41	**17**	4	4	**39**
4. Other eliminations	609	253	**40**	161	78	**20**	448	175	**49**	82	36	**30**	77	42	**12**	2	0	—
5. Sentenced	2680	2061	**21**	1158	939	**21**	1522	1122	**20**	696	688	**24**	398	215	**12**	64	36	**19**
INTERVAL C Disposition in Circuit Court																		
1. Nolle Prosequi	1106	515	**79**	405	254	**42**	701	261	**116**	102	33	**53**	271	200	**34**	32	21	**102**
2. Disposed of on action of court	251	79	**98**	63	33	**90**	188	46	**103**	37	16	**50**	9	4	**9**	17	13	**164**
3. Tried and acquitted	323	168	**27**	136	85	**30**	187	83	**25**	83	35	**41**	49	46	**15**	4	4	**98**
4. Other eliminations	609	51	**76**	161	26	**29**	448	25	**125**	82	13	**22**	77	13	**35**	2	0	—
5. Sentenced	2680	1696	**14**	1158	826	**14**	1522	870	**15**	696	558	**10**	398	216	**23**	64	52	**14**
INTERVAL D																		
Eliminated in Preliminary Hearing	1834	1650	**23**	1456	1381	**26**	378	269	**11**	417	401	**20**	858	818	**30**	181	162	**19**
Disposition in Circuit Court																		
1. Nolle Prosequi	1106	1059	**139**	405	381	**94**	701	678	**165**	102	100	**106**	271	249	**79**	32	32	**168**
2. Disposed of on action of court	251	225	**139**	63	60	**147**	188	165	**136**	37	36	**105**	9	7	**33**	17	17	**283**
3. Tried and acquitted	323	316	**94**	136	135	**83**	187	181	**103**	83	83	**94**	49	48	**57**	4	4	**174**
4. Other eliminations	609	162	**84**	161	77	**47**	448	85	**117**	82	39	**62**	77	37	**33**	2	1	**14**
5. Sentenced	2680	2432	**50**	1158	1035	**45**	1522	1397	**53**	696	654	**52**	398	321	**31**	64	60	**48**

TABLE XVI—(Cont.)

Summary of Median Time Intervals, Classified by Certain Types of Dispositions

Non-Liquor Cases

Counties Classified by Percentage of Population Urban (U. S. Census, 1920)

	7 60.0–69.9			8 50.0–59.9			9 40.0–49.9			10 30.0–39.9			11 20.0–39.9			12 10.0–19.9			13 0.0–9.9		
	Total in Disposition	Total Intervals Recorded	Median Interval in Days	Total in Disposition	Total Intervals Recorded	Median Interval in Days	Total in Disposition	Total Intervals Recorded	Median Interval in Days	Total in Disposition	Total Intervals Recorded	Median Interval in Days	Total in Disposition	Total Intervals Recorded	Median Interval in Days	Total in Disposition	Total Intervals Recorded	Median Interval in Days	Total in Disposition	Total Intervals Recorded	Median Interval in Days
INTERVAL A																					
Disposition in Circuit Court																					
1. Nolle Prosequi	141	133	**29**	84	71	**38**	33	29	**24**	236	211	**19**	60	58	**27**	103	87	**51**	44	35	**42**
2. Disposed of on action of court	13	13	**12**	6	4	**70**	2	2	**9**	43	35	**24**	29	25	**15**	80	62	**48**	15	12	**37**
3. Tried and acquitted	20	17	**8**	23	23	**48**	9	7	**12**	54	50	**21**	13	13	**37**	55	52	**43**	13	12	**30**
4. Other eliminations	33	26	**30**	69	36	**60**	34	24	**2**	145	104	**31**	28	21	**25**	111	91	**29**	28	12	**18**
5. Sentenced	205	184	**16**	186	165	**30**	65	55	**16**	534	479	**15**	183	175	**17**	286	255	**26**	63	56	**21**
INTERVAL B																					
Disposition in Circuit Court																					
1. Nolle Prosequi	141	106	**26**	84	47	**13**	33	26	**28**	236	117	**66**	60	13	**4**	103	28	**78**	44	26	**10**
2. Disposed of on action of court	13	11	**25**	6	4	**31**	2	2	**19**	43	19	**70**	29	3	**145**	80	33	**76**	15	7	**10**
3. Tried and acquitted	20	19	**40**	23	20	**10**	9	8	**10**	54	52	**45**	13	12	**46**	55	52	**53**	13	13	**20**
4. Other eliminations	33	16	**26**	69	40	**20**	34	9	**17**	145	57	**81**	28	6	**30**	111	43	**53**	28	4	**35**
25. Sentenced	205	130	**24**	186	140	**12**	65	59	**6**	534	418	**19**	183	110	**37**	286	219	**24**	63	46	**1**
INTERVAL C																					
Disposition in Circuit Court																					
1. Nolle Prosequi	141	90	**115**	84	37	**63**	33	25	**111**	236	77	**142**	60	8	**130**	103	12	**133**	44	12	**96**
2. Disposed of on action of court	13	10	**89**	6	2	**38**	2	2	**74**	43	20	**126**	29	2	**204**	80	7	**60**	15	3	**96**
3. Tried and acquitted	20	15	**23**	23	10	**14**	9	6	**126**	54	34	**13**	13	6	**22**	55	10	**1**	13	2	**134**
4. Other eliminations	33	5	**19**	69	1	**12**	34	0	—	145	11	**120**	28	3	**195**	111	3	**179**	28	2	**294**
5. Sentenced	205	127	**27**	186	121	**15**	65	42	**7**	534	342	**15**	183	88	**5**	286	144	**10**	63	6	**49**
INTERVAL D																					
Eliminated in Prelim'y Hearing	55	38	**10**	63	41	**7**	13	9	**8**	195	155	**13**	25	20	**10**	27	6	**17**	—	—	—
Disposition in Circuit Court																					
1. Nolle Prosequi	141	138	**140**	84	81	**117**	33	32	**161**	236	229	**195**	60	56	**211**	103	100	**160**	44	42	**126**
2. Disposed of on action of court	13	13	**104**	6	5	**109**	2	2	**93**	43	36	**134**	29	26	**152**	80	70	**152**	15	13	**76**
3. Tried and acquitted	20	18	**76**	23	23	**64**	9	8	**81**	54	52	**115**	13	13	**137**	55	54	**118**	13	13	**74**
4. Other eliminations	33	8	**67**	69	3	**134**	34	2	**183**	145	28	**101**	28	9	**134**	111	26	**145**	28	9	**97**
5. Sentenced	205	186	**60**	186	170	**55**	65	60	**55**	534	496	**47**	183	172	**45**	286	262	**65**	63	51	[illegible]

which the time interval was calculated; and the median time interval. The two former figures are given to show respectively the relative importance of the class of disposition, and the relative size of the class whose time interval was studied. These figures were introduced to protect the reader against regarding all the medians as of equal reliability. The reliability varies (roughly) inversely as the square root of the number of cases. (There are other factors entering into the reliability but we disregard these here.)

The first three sets of columns, (for total state, three urban counties, and 36 rural counties) call for comment. The medians here were not directly calculated from the original material, but are the arithmetic averages of the medians calculated for each of the counties or groups of counties. This was done because of the large amount of labor involved in adding up the various distributions by county groups. They are not the exact medians that would be derived by the other method, but they give a fair approximation. If the reader will keep in mind that they are the average medians, not the medians of the whole distribution, no confusion will result.

Since the time interval D (total time from arrest to completion of procedure) is the most significant of the figures, section D will be considered first.

Comparison of the Figures for Urban and Rural Counties.

The average median for all cases eliminated in the preliminary hearing is 23 days for the whole state, 26 days for the three urban counties and 11 days for the thirty-six rural counties. The latter figure is relatively unreliable, for as we saw earlier in this chapter the number of cases settled in the lower court is much smaller in the country than in the city (378 cases to 1456). An even greater difference exists between the numbers of cases for which time intervals could be calculated (269 to 1381). As it stands the value 11 days reflects what we noted above, namely a great unwillingness of justices of the peace to assume responsibility for the final disposition of felony cases in their courts.

Proceeding to the consideration of time interval D for the several dispositions in the circuit court we note the following outstanding facts regarding the three summaries:

1. In every one of the three groups of counties the shortest time interval is for cases sentenced. This is probably due to the fact that these cases include a large proportion of cases in which pleas of guilty were accepted. Since this procedure avoids the trial and its delays it is natural that smaller time intervals occur in this type of disposition. (See Table IX-A, this chapter.)

2. With one exception (in the three largest counties) the disposition "nolle prosequi" is associated with the maximum time interval. The one exception occurs where the "disposition on action of the court" exceeds it; but here the number of cases (60) is fairly small, and therefore the median is not so reliable a figure.

3. In every one of the three groups of counties the cases disposed of by the prosecutor or the judge drag out the longest.

4. Comparing groups 2 and 3 (urban with rural counties), it is interesting and probably significant that the median time interval for the rural counties is greater than for the urban counties, with the one exception—"disposed of on action of the court." Except for the last item ("sentenced") the differences are too large to be due to mere chance. This has some bearing on the problem referred to earlier, namely the effectiveness of our system of criminal justice in the country as compared with the city. If speed of disposition is significant of good administration the three urban counties are certainly better than the thirty-six rural ones.

Comparison of the Urban Counties.

Buchanan County, containing St. Joseph, the smallest of the three large cities, shows some astonishingly long intervals, when compared with the other two urban counties. Disregarding "other eliminations" and acquittals which comprise only four cases measured and are hence insignificant, we have for each of the other three eliminations in the circuit court figures which are very much larger than for the other two counties. Cases sentenced take about as much time as in St. Louis, and twice as much as in Kansas City. On the whole the three urban counties rank as follows: longest periods, Buchanan; then St. Louis City; and then Jackson County. Judged by either the standard of the average medians for the state, or by the average medians for the three urban counties, Kansas City is very low.

The question of whether these intervals are long or short is one of standards. There are very few standards available. The figures for the Cleveland Survey of Criminal Justice (p. 304 of that report) show the following averages for cases coming up from the inferior courts:

Guilty on first plea	26.1 days
Change of plea to guilty	62.5 days
Change of plea to guilty of lesser offense	65.6 days
Guilty of felony after jury trial	71.7 days
Acquittal by jury	83.8 days
Dismissed or discharged on motions	106.0 days
Nolled on all counts, no reason assigned	99.8 days

We have here the general outlines of the Cleveland picture practically as the urban counties of Missouri show them: cases that are nolled or disposed of by the court take considerably longer than cases sentenced or acquitted.[1]

Comparison of the Rural Counties.

The median time interval D, we have seen, is in general larger for the rural counties than for the urban. Comparing the former among themselves we note:

1. The cases sentenced fall within a relatively narrow time range —45 days to 65 days. Degree of urbanness plays no apparent role in determining this fact.
2. The dispositions by nolle and by action of the court (relative to the other disposition) consume much time; the least urban counties (0.0-9.9%) show decidedly smaller figures than the average for the whole group of counties. (The number of cases is, however, small in this one group.)
3. Acquittals stand in general between sentences and nolles.
4. "Other eliminations" are few in number and tend therefore to offer unreliable medians.

Time Intervals A, B, C.

Certain facts stand out here in the summary columns (1, 2, 3).

1. In general A is the shortest, B the intermediate and C the longest of these three intervals. A and B are closer together than A and C or B and C. Delays, therefore, would seem greater in the period after the date set for trial.
2. Sentenced cases in general show relatively short periods, compared with cases not sentenced.
3. Here again the urban counties show in general shorter intervals than the rural.

Since the interval D is the aggregate of A, B, and C, it is natural that there should be this general agreement of results for the first three with those for D. Within the individual counties and groups of counties the outstanding facts are the higher figures for Buchanan as compared with Jackson and St. Louis City, and the low figures for the 0.0-9.9% counties in B and the fairly high figures for this group in A and C.

CONTINUANCES

Table XVII includes three types of items:

1. The number of cases of a particular disposition,

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[1] These figures cannot be compared directly with ours because they are means and not medians; but the relative sizes of them are significant. It is interesting to note that the average total time for felony cases has been reduced from 69 days in 1919 to 41 days in 1925. (Fourth Quarterly Bulletin, Cleveland Association for Criminal Justice, December 31, 1925, p. 5.)

TABLE XVII

The Average and Extreme Number of Continuances, Classified According to Certain Types of Case Disposition

Non-Liquor Cases

	1 Total State			2 Total Urban Counties			3 Total Rural Counties			4 St. Louis City			5 Jackson County			6 Buchanan County		
Type of Disposition	Number of Cases	Average Continuances	Extreme Number of Continuances	Number of Cases	Average Continuances	Extreme Number of Continuances	Number of Cases	Average Continuances	Extreme Number of Continuances	Number of Cases	Average Continuances	Extreme Number of Continuances	Number of Cases	Average Continuances	Extreme Number of Continuances	Number of Cases	Average Continuances	Extreme Number of Continuances
Eliminated in Preliminary Hearing..	1834	1.266	25	1456	1.408	16	378	.719	25	417	1.132	13	858	1.771	16	181	.320	5
Disposition in Circuit Court																		
1. Nolle Prosequi.................	1106	1.165	13	405	1.403	11	701	1.028	13	102	.813	6	271	1.661	11	32	1.093	4
2. Disposed of on action of court...	251	.618	6	63	.762	3	188	.569	6	37	.675	3	9	.667	3	17	1.000	3
3. Tried and acquitted............	323	.870	8	136	.941	7	187	.818	8	83	.578	4	49	1.490	7	4	1.750	3
4. Other eliminations..............	609	.982	8	161	1.074	8	448	.949	8	82	.756	4	77	1.428	8	2	.500	1
5. Sentenced.....................	2680	.260	8	1158	.270	8	1522	.251	6	7 66	198	4	398	.405	8	64	.219	3

Counties Classified According to Percentage of Population Urban (U. S. Census, 1920)

	7			8			9			10			11			12			13		
	60.0–69.9			50.0–59.9			40.0–49.9			30.0–39.9			20.0–29.9			10.0–19.9			0.0–9.9		
Eliminated in Prelim'y Hearing..	55	1.418	25	63	.603	4	13	.384	2	195	.687	5	25	.200	2	27	.444	2	0	—	—
Disposition in Circuit Court																					
1. Nolle Prosequi..............	141	.340	3	84	.726	5	33	1.454	4	236	1.758	13	60	.583	4	103	.883	4	44	.523	4
2. Disposed of on action of court.	13	.230	1	6	.667	2	2	4.000	4	43	.651	6	29	.138	1	80	.713	5	15	.200	1
3. Tried and acquitted..........	20	1.600	8	23	.391	2	9	1.000	5	54	1.203	8	13	.538	3	55	.474	2	13	.384	2
4. Other eliminations...........	33	.879	6	69	.623	4	34	.970	5	145	1.331	8	28	.357	2	111	.991	5	28	.250	2
5. Sentenced...................	205	.166	4	186	.220	4	65	.553	5	534	.331	7	183	.153	4	286	.220	5	63	.064	1

2. The mean number of continuances granted in cases of the particular disposition,

3. The extreme number of continuances granted in cases of the particular disposition.

These three items are found in the first, second, and third columns, respectively, of the sections devoted to the several administrative units.

The mean or arithmetic average was used here instead of the median, because in a large number of instances more than half of the cases showed no record of continuance at all; the median then would have had no value for the description of our data.

Continuances in the Lower Courts.

The average for continuances in the preliminary hearing is only about half as great in the rural as in the urban counties; but it should be observed that the number of cases in the rural counties is about one-fourth as large as in the urban. As in the case of time intervals we have here another evidence of the unwillingness of justices of the peace to assume much responsibility for felony cases. The average of continuances for the entire state is only 1.266; and the largest average for any separate group is that for Jackson County (1.771); the smallest is found in the group of counties 20.0 to 29.9 percent urban (.200).

Continuances in the Circuit Court.

Taking the three summary columns (groups 1, 2, and 3)—for the state, the urban counties, and the rural counties—we note that in all three cases the rank of dispositions in the order of their degree of association with continuances is the same; Nolle prosequi, other eliminations, acquittal, disposed of on action of court, and sentenced. Moreover the averages for the urban counties are consistently higher than those for the rural counties. The differences within the several pairs of averages are large enough to be significant of a generally larger use of continuances in the cities than in the country. On the other hand the largest extremes are found in the country in four out of the six disposition classes.

Comparison of the urban counties reveals Jackson County as first, Buchanan second and St. Louis City third in the use of continuances in the circuit court. Two groups of rural counties (40.0-49.9 percent and 50.0-59.9 percent) show relatively high averages throughout the circuit court figures; most of the other groups fall noticeably below the urban county averages. But there is no definite correlation between degree of urbanness and the use of continuances.

In the preceding discussion (on time intervals) we noted that the rural counties take more time in disposing of cases than do the urban counties. In this section on continuances we see that the rural counties use continuances less than the urban. But it should be remembered that the rural counties have the system of a circuit judge who sits in succession in the several counties of the circuit. Court is not in session continuously as it is in the cities (except of course for the summer recess in the cities). This means that certain cases will naturally drag out longer for no other than this administrative reason. For example: a case entering the docket immediately after court has closed for the given term will have to wait longer than it would—other things being equal—in the city courts.

The Relation Between the Number of Continuances and the Time Consumed

Table XVIII presents a summary of the relationship of the number of continuances to the several time intervals. The construction of the table is as follows: For each time interval in each of the counties or groups of counties three parallel columns set forth (a) the number of cases, (b) the number of continuances, and (c) the median time interval for the cases having the given number of continuances. It is apparent from a cursory inspection of the table that the time interval increases as the number of continuances increases. Mere inspection will not reveal how much the continuances affect the time interval. To measure this relationship the following procedure was undertaken:

Since in every instance the number of cases where there was no continuance was larger (and generally much larger) than the number in any group of cases where there were continuances, it was assumed that the median for this first, "no continuance" class was a fair measure of the time interval that would be normal for all if there had been no continuances in any case whatever. Therefore the difference between this median and any other median in the same column (for a given county) would indicate the average increase in the time interval due to the number of continuances occurring with the particular median interval. That this assumption is fair is borne out by the fact that, in general, the median time interval increases with the increase in the number of continuances. The median for "no continuances" was therefore substracted from the median for 1 continuance, for 2, for 3, etc. The remainders represented roughly an average time interval probably due to continuances. Each of these remainders was divided by the number of continuances with which it was associated. These quotients showed a kind of rough average

TABLE XVIII

RELATION OF CONTINUANCES TO TIME INTERVALS

St. Louis City

Preliminary Hearing Interval D			Circuit Court Interval A			Circuit Court Interval B			Circuit Court Interval C			Circuit Court Interval D		
Number of Cases	Number Contin-uances	Median Interval in Days	Number of Cases	Number Contin-uances	Median Interval in Days	Number of Cases	Number Contin-uances	Median Interval in Days	Number of Cases	Number Contin-uances	Median Interval in Days	Number of Cases	Number Contin-uances	Median Interval in Days
178	0	12	758	0	17	716	0	24	505	0	7	721	0	53
102	1	21	136	1	27	127	1	47	107	1	53	128	1	142
64	2	34	42	2	21	40	2	55	28	2	103	38	2	192
24	3	44	16	3	22	11	3	37	8	3	110	13	3	235
16	4	61	15	4	36	8	4	71	6	4	218	9	4	325
9	5	88	2	5	44	2	5	41	2	5	60	2	5	144
5	6	170	1	6	15	1	6	88				1	6	103
2	7	224												
1	13	284												
Jackson County														
272	0	14	271	0	11	256	0	12	242	0	14	423	0	31
194	1	26	61	1	20	105	1	16	99	1	29	94	1	61
143	2	42	35	2	28	51	2	13	46	2	44	45	2	101
80	3	56	21	3	31	34	3	16	32	3	80	35	3	123
54	4	82	14	4	30	15	4	25	20	4	107	21	4	159
35	5	100	8	5	1	10	5	16	5	5	159	5	5	167
14	6	91	6	6	29	15	6	20	13	6	161	13	6	178
9	7	113	4	7	52	6	7	41	5	7	258	5	7	298
6	8	113				9	8	47	8	8	274	9	8	321
1	9	174				4	9	13	5	9	294	5	9	307
1	11	122				2	11	31	2	11	250	2	11	281
1	12	291												
8	13	171												
1	16	72												

TABLE XVIII (Continued)

RELATION OF CONTINUANCES TO TIME INTERVALS

Buchanan County

Preliminary Hearing Interval D			Circuit Court Interval A			Circuit Court Interval B			Circuit Court Interval C			Circuit Court Interval D		
Number of Cases	Number Contin-uances	Median Interval in Days	Number of Cases	Number Contin-uances	Median Interval in Days	Number of Cases	Number Contin-uances	Median Interval in Days	Number of Cases	Number Contin-uances	Median Interval in Days	Number of Cases	Number Contin-uances	Median Interval in Days
142	0	17	79	0	23	50	0	20	58	0	14	82	0	64
6	1	26	9	1	73	9	1	33	9	1	130	9	1	235
2	2	43	12	2	76	12	2	37	12	2	166	12	2	277
8	3	41	6	3	95	6	3	44	6	3	233	6	3	392
1	4	101	5	4	47	5	4	27	5	4	123	5	4	197
4	5	74												
							60.0–69.9							
20	0	8	299	0	21	227	0	25	189	0	29	302	0	72
9	1	10	44	1	27	38	1	26	36	1	114	39	1	197
3	2	27	18	2	34	15	2	44	12	2	149	14	2	215
3	3	22	7	3	32	7	3	103	5	3	19	5	3	353
1	4	48	2	4	63	2	4	16	2	4	10	2	4	73
2	5	36	2	5	5	2	5	336	2	5	47	2	5	387
1	13	93	1	6	10	1	8	93	1	8	285			
1	25	207												
							50.0–59.9							
22	0	6	219	0	38	160	0	11	108	0	15	241	0	67
11	1	5	50	1	30	62	1	18	43	1	39	45	1	105
4	2	59	17	2	42	15	2	14	12	2	59	12	2	130
3	3	18	5	3	54	3	3	6	4	3	216	5	3	204
1	4	85	7	4	54	10	4	10	3	4	265	5	4	275
			1	5	68	1	5	14	1	5	271	1	5	353

TABLE XVIII (Continued)

RELATION OF CONTINUANCES TO TIME INTERVALS

Preliminary Hearing Interval D			Circuit Court Interval A			Circuit Court Interval B			Circuit Court Interval C			Circuit Court Interval D		
Number of Cases	Number Contin- uances	Median Interval in Days	Number of Cases	Number Contin- uances	Median Interval in Days	Number of Cases	Number Contin- uances	Median Interval in Days	Number of Cases	Number Contin- uances	Median Interval in Days	Number of Cases	Number Contin- uances	Median Interval in Days
40.0–49.9														
5	0	18	66	0	16	50	0	6	32	0	6	56	0	39
3	1	8	20	1	28	17	1	10	17	1	47	20	1	132
1	2	22	17	2	18	16	2	19	16	2	106	17	2	206
			8	3	5	10	3	49	5	3	254	5	3	306
			4	4	17	4	4	19	3	4	74	4	4	145
			2	5	5	3	5	9	2	5	346	2	5	365
30.0–39.9														
92	0	7	598	0	16	446	0	19	300	0	9	598	0	46
27	1	21	106	1	27	88	1	59	75	1	36	96	1	180
15	2	29	57	2	22	44	2	73	34	2	100	52	2	248
9	3	41	34	3	16	29	3	73	26	3	140	29	3	318
10	4	72	18	4	19	16	4	56	16	4	227	17	4	349
2	5	118	17	5	35	16	5	77	8	5	178	8	5	277
			6	6	46	5	6	49	4	6	287	5	6	338
			34	7	3	9	7	93	7	7	340	32	7	352
			8	8	21	9	8	846	4	8	207	3	8	414
			1	13	26	1	13	64	1	13	686	1	13	776
20.0–29.9														
16	0	9	239	0	17	109	0	38	84	0	3	224	0	60
3	1	13	37	1	32	28	1	31	18	1	117	34	1	171
1	2	51	13	2	29	4	2	5	3	2	225	14	2	391
			2	3	68	1	3	2	1	3	261	2	3	408
			1	4	14	2	4	380	1	4	23	2	4	607

TABLE XVIII (Continued)

Relation of Continuances to Time Intervals

10.0–19.9

Preliminary Hearing Interval D			Circuit Court Interval A			Circuit Court Interval B			Circuit Court Interval C			Circuit Court Interval D		
Number of Cases	Number Contin-uances	Median Interval in Days	Number of Cases	Number Contin-uances	Median Interval in Days	Number of Cases	Number Contin-uances	Median Interval in Days	Number of Cases	Number Contin-uances	Median Interval in Days	Number of Cases	Number Contin-uances	Median Interval in Days
14	0	10	385	0	29	274	0	30	132	0	5	369	0	75
3	1	20	75	1	50	51	1	104	24	1	88	74	1	204
4	2	47	55	2	66	34	2	57	13	2	151	48	2	249
			14	3	34	8	3	105	1	3	76	9	3	152
			10	4	57	7	4	85	4	4	108	11	4	167
			8	5	24	1	5	159	1	5	58	1	5	227
0.0–9.9														
			100	0	31	72	0	11	10	0	2	100	0	65
			19	1	28	18	1	11	9	1	96	20	1	168
			5	2	23	4	2	73	3	2	266	5	2	333
			2	3	40	1	3	230	1	3	1	2	3	446
			1	4	10	1	4	4	1	4	480	1	4	494

time consumed by each continuance. To find out what the total effect of continuances was in any time interval group, these quotients were averaged; that is, the arithmetic mean was calculated, weighting each quotient by the number of cases in its class. This has the desirable effect of giving a large weight to quotients where there are many cases, and whose reliability is therefore relatively high. These means are therefore a rough average of the amount added by one continuance to the time the case requires.

A simple and short illustration is that of the D interval in preliminary hearings for counties 20.0 to 29.9 percent urban.

There were 13 cases with no continuance; median interval 9 days
There were 3 cases with 1 continuance; median interval 13 days
There was 1 case with 2 continuances; median interval 51 days

Subtracting 9 from 13 leaves 4; 9 from 51 leaves 42
Dividing 4 by 1 gives 4; dividing 42 by 2 gives 21
Weighting 4 by 3 (the number of cases) equals 12
Weighting 21 by 1 (the number of cases) equals 21
Total 33

The total number of cases with continuances was 3 plus 1 or 4; 33 divided by 4 is 8.3 days, the measure of the average effect of one continuance in prolonging the case.

Occasionally the cases with continuances are reported as shorter than those without; so the differences of medians are occasionally negative; and in three time intervals [A in the 50.0-59.9 counties and B in the 20.0-29.9 counties and D (preliminary hearing) in the 40.0-49.9 counties] the average effect of continuances seems to be negative, and is so indicated in the summary Table XIX.

Table XIX contains a brief summary of these means, together with the number of cases associated with each one, to show the relative reliability, so far as that is affected by the number of cases. It is this table which will serve as the basis of the discussion that follows.

Taking the state as a whole we note that the average time interval per continuance is, in the circuit court, smallest for A (7.8 days); intermediate for B (16.1 days); and largest for C (41.8 days). For D it is of course much larger, since the D interval is the sum of A, B, and C. The same relative positions hold for urban and for rural counties; the difference between A and B is slight in the cities and great in the country (9.0 to 9.8 and 7.1 to 21.2). On the other hand the difference between B and C is proportionately much greater in the cities than in the country (9.8 to 33.2 and 21.2 to 50.4). Comparing the columns for urban with those for rural territory we note at once the fact that the intervals B, C, and D are all notably higher in the country than in the city. As was pointed out above this may be merely a result of the system of traveling judges in the circuit courts of the rural counties. The average time intervals recorded in Table XVI are invariably higher in the rural than in the urban counties. The smaller average number of continuances in the rural counties makes the inference obvious that the average amount of time consumed per continuance should be greater in the rural than in the urban counties. This inference is brought to a greater degree of plausibility by the results shown in Table XIX. It should be kept in mind, of course, that in Table XVI the time intervals are classified by disposition and in Table XIX by continuances. But in general the results are logically harmonious.

In the preliminary hearing, however, the situation is reversed. The average time added by one continuance (time interval D) is smaller for rural than for urban counties. In Table XVI the median time interval D for preliminary hearing eliminations is 11 days in rural counties, compared with 26 days in urban counties. In Table XVII the average number of continuances in the preliminary hearing eliminations of rural counties is about one-half that of the average number in the urban counties. The smaller average time added by one continuance probably reflects that which has been noted before—the relative unwillingness of county magistrates to detain cases in their jurisdiction.

Comparing the urban counties (circuit court cases) among themselves we note the following outstanding facts: in general Jackson County has shorter intervals than the average for the urban counties; Buchanan County much longer ones, and St. Louis intermediate ones. The order is reversed in the case of preliminary hearing intervals.

Among the rural counties there is a very wide variation in the means for preliminary hearings: from minus 7.0 to plus 14.8. Similar diversity is revealed in every other one of the series of means. No tendency for larger intervals in the less urban or more urban areas is clearly discernible.

In concluding this discussion of our statistical data it should be noted that only a small part of the facts revealed by the tables has been touched upon in the discussion. The limitations of space have required emphasis in the text upon only the outstanding facts. The analysis of the results in the individual groups of counties has of necessity been extremely limited. The fact, however, that the groups of counties have nothing in common save a certain range of percentage of urbanness offers some reason for not taking these combination figures as too significant. For obviously conditions are

TABLE XIX

AVERAGE NUMBER OF DAYS ADDED BY ONE CONTINUANCE; CASES CLASSIFIED BY LOCALITY AND TYPE OF TIME INTERVAL

	Total State		Three Urban Counties		Rural Counties		St. Louis City		Jackson County		Buchanan County	
	No. of Cases	Mean in Days	No. of Cases	Mean in Days	No. of Cases	Mean in Days	No. of Cases	Mean in Days	No. of Cases	Mean in Days	No. of Cases	Mean in Days
(D) Eliminated in Preliminary Hearing; Date of arrest to date of final disposition	908	12.5	791	12.9	117	10.1	223	11.2	547	13.7	21	10.0
(A) Circuit Court; Date of arrest to date of indictment or information	1121	7.8	393	9.1	728	7.1	212	7.4	149	7.2	32	29.4
(B) Circuit Court; Date of indictment or information to date set for trial	1055	16.1	472	9.8	583	21.2	189	19.6	251	2.5	32	8.6
(C) Circuit Court; Date set for trial to date of final disposition	837	41.8	418	33.2	419	50.4	151	45.6	235	18.9	32	79.1
(D) Circuit Court; Date of arrest to date of final disposition	1101	79.8	457	57.8	644	95.4	191	81.0	234	31.2	32	113.7

	60.0–69.9		50.0–59.9		40.0–49.9		30.0–39.9		20.0–29.9		10.0–19.9		0.0–9.9	
	No. of Cases	Mean in. Days	No. of Cases	Mean in Days	No. of Cases	Mean in Days	No. og Cases	Mean in Days	No. of Cases	Mean in Days	No. of Cases	Mean in Days	No. of Cases	Mean in Days
(D) Eliminated in Preliminary Hearing; Date of arrest to date of final disposition	20	4.8	19	6.7	4	–7.0	63	13.5	4	8.3	7	14.8		
(A) Circuit Court; Date of arrest to date of indictment or information	74	5.7	80	–3.8	51	4.5	281	4.9	53	12.6	162	16.5	27	2.8
(B) Circuit Court; Date of indictment or information to date set for trial	65	5.0	91	4.9	50	6.6	217	30.5	35	–2.9	101	45.1	24	8.1
(C) Circuit Court; Date set for trial to date of final disposition	58	65.4	63	28.6	43	48.8	175	37.2	23	107.7	43	71.6	14	97.2
(D) Circuit Court; Date of arrest to date of final disposition	62	104.4	68	41.8	48	82.5	243	99.8	52	126.9	143	99.6	28	110.4

different in each county and a single group of counties may contain a wide variety of conditions. It would be difficult, however, to find in each county the exact relation of its statistical results to local practices, customs, and attitudes, without a prohibitively intensive and expensive study. We come back then to the fundamental fact that in a statistical study we try to throw up in high relief the mass results. The smaller the unit of study, the less reliable do the figures become for purposes of generalization.

It should also be borne in mind that only one basis of grouping of counties has been used. The counties of Missouri might have been grouped as north and south of the Missouri River or according to the per capita value of agricultural products; or according to the percentage tenant farmers are of all farmers; or according to the percentage of foreign born or of colored in the population. We have not attempted to differentiate between white and colored in this study; nor between male and female. Nor have we asked any questions of a criminological, as contrasted with a prodecural, nature. All these possibilities indicate that we could take advantage of the almost unlimited range of possible study only in slight degree.

It may be interesting to go back over our study and summarize briefly the answers to the questions proposed on pages 4 and 5.

1. The outstanding fact about the Mortality Table is this: of 100 cases (excluding liquor cases) for which warrants were issued, 32—almost exactly one-third—were punished: and that in the cities this percentage was slightly smaller—29; in the country slightly larger—34. Regardless of the points at which those eliminated were dropped out, this is the average apparent effectiveness of criminal procedure.

2. Appeals, retrials, changes of venue, and mistrials take place in only about 5 per cent of all non-liquor cases; and that of these a considerable proportion ultimately were punished.

3. Jury trials actually occurred in only 7.5 percent of all non-liquor cases.

4. There is in the urban counties an almost complete abandonment of the idea that liquor law violations are felonies; and in the country liquor law violations are noticeably less liable than others to felony punishments.

5. There is a very direct relationship between the charge lodged against the accused and the type of sentence imposed.

6. The type of plea offered by the prisoner seems to be directly related to the type of punishment.

7. The charge is very important in its effect on the major types of dispositions of cases.

8. Half of the cases sentenced for which time intervals were calculated took more than 50 days from arrest to final disposition, and at the other end of the scale half the cases that were nolled or disposed of on action of the court took over 139 days. Moreover there is a tendency for continuances to increase the length of the intervals in the cases that pass through the courts.

These are very summary statements. But they serve to call our attention to certain basic facts about the functioning of the courts. These facts must be considered in connection with two important questions; first, do the courts function speedily and effectively to determine guilt and to assess punishment? and second, if they do not, then what can be done to make them effective and speedy?

PART VIII

NECESSARY CHANGES IN CRIMINAL PROCEDURE

By

HERBERT S. HADLEY, LL.D.

Formerly Prosecuting Attorney of Jackson County, Attorney-General of Missouri, Governor of Missouri, Professor of Criminal Law and Procedure, Colorado University Law School, and now Chancellor of Washington University, Chairman of the Committee on the Defects in Criminal Justice of the American Law Institute, and Chairman of the Committee on Criminal Procedure of the National Crime Commission.

and

JESSE W. BARRETT, A.B., LL.B., LL.D.

Formerly Special Assistant United States Attorney,
Formerly Attorney-General of Missouri.

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NECESSARY CHANGES IN CRIMINAL PROCEDURE

INTRODUCTION[1]

The statistical conclusions reached by this survey have shown that for the year from October 1, 1923, to October 1, 1924, there were approximately 13,000 serious major crimes reported to the police of St. Louis. Of these 13,000 offenses only 964 resulted in criminal prosecutions. Of those prosecuted 55 were acquitted after trial by juries and 489 were released by action of the court or prosecutor, and 420 sentenced, and of those sentenced only 374 were punished. For the same offenses in Kansas City for the same year, the following results were shown. Of 5,261 offenses reported to the police department there were 276 criminal prosecutions; of those prosecuted 11 were acquitted after trial by juries and 174 were released by action of the court or prosecutor and 91 sentenced, and of those sentenced only 76 were punished. The number of offenses reported to the police department comprises only about 40% of all felonies committed, the remaining 60% being reported to the prosecutor who keeps no records of the number of complaints filed. For that portion of the state from which information was secured, 7,032 warrants for offenses other than violations of the prohibition laws were issued, which resulted in 2,680 convictions or pleas of guilty, of which number 2,232 served some portion of the sentence imposed.

These figures verify as to Missouri the conclusions reached in studies made by the writer in other states and cities including those from some nineteen states which the writer has personally examined. They indicate that of those committing major crimes such as homicide, burglary, robbery and assault, not one out of every ten is apprehended and adequately punished, and if we include in our calculation minor offenses such as violations of the state and national prohibition laws and other regulatory measures, not one out of every twenty is apprehended and adequately punished. If we include in our calculation only such offenders as are apprehended and prosecuted we estimate that not over 25% are convicted and adequately punished, and of those who are actually placed on trial before a jury less than 50% are convicted and adequately punished. We use the expression "adequately punished" to indicate a punishment at least equal to the minimum fixed by law. These averages which obtain generally throughout the country are shown to be conservative by the results of the investigation made so far as this state is concerned.

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[1] Except where otherwise indicated this report was written by Chancellor Hadley.

Stated in terms of percentages, the result is that our system of apprehending and prosecuting those guilty of criminal offenses is only from 5% to 10% efficient; considering those apprehended and indicted for major offenses it is only from 25% to 30% efficient, and including those actually tried for major offenses about 50% efficient. Such figures stated in the abstract oftentimes mean little to the casual reader, but if he should stop to consider a similar result in the conduct of a business such as banking, transportation or manufacturing with a percentage of efficiency from only 5% to 50%, he could more clearly realize the seriousness of the problem that confronts society today, depending as it does for the protection of life and property upon a system of apprehending and prosecuting violators of the law which is from 50% to 95% inefficient.

When we also consider that no such condition exists in any other civilized country, we may well demand a statement of causes. The causes are numerous, including inadequate and inefficient police departments, inefficient prosecuting officers and poorly organized offices, lack of co-operation between examining magistrates, police, prosecutors and trial courts, indifference of juries to their public duties, technical attitude of appellate courts towards criminal convictions, easy-going public attitude towards crime, sentimental and emotional pardons and paroles, and a number of others more or less important. But the principal defect, at least in the work of actual prosecution, that makes for an inefficient administration of justice, is our cumbersome, archaic and inefficient system of criminal procedure with the glorification of technicality and formalism which it fosters and maintains. The effect of this system, with its apparently inevitable delays and defeats of justice, is also to create a flabby as compared with a stern and vigorous sense of justice on the part of public officials and the public generally.

While we are not indifferent to the measures of social, economic and political reform which many earnest men and women urge for reducing the amount of crime, yet the writer's experience and investigation indicates that the large amount of crime in this country is due to the fact that those who are disposed to commit crime do not stand in awe of the law, and they do not do so because comparatively few are punished. That a prompt and effective enforcement of the law with a finality of judgment and a certain execution of sentences imposed would make us a comparatively law abiding people, is a proposition fully demonstrated by the experience and history of the English people in dealing with this same problem.

Where there exists a large difference of opinion as to changes to be made in methods of procedure and prosecution, the most dependable basis of a confident judgment can be found in the experience under other systems of criminal procedure different from our own. Particularly is this true if we consult, in such an investigation, the experience of countries like Canada and England, where social, economic and political conditions are similar to our own. Can we not hope to find, therefore, in the rules of procedure and methods of dealing with crime in England and Canada our most valuable suggestions for practical reforms here? There was a time when England was a crime-ridden nation, when man could not travel the streets at night or the highways by day without the ever-present danger of robbery or death, when the rights of persons or of property were generally insecure. Various methods of correction were suggested and tried. Extreme and barbarous punishments were fixed and nearly two hundred different offenses were made punishable by death. Men, women and children were sent to the gallows for stealing five shillings, and as the petty thieves were publicly hanged as a warning to others, others coolly committed larcenies under the protection of the crowd. The humanity of the people finally protested against the brutality and severity of these punishments, which in addition to having proved inefficient as deterrents to crime had also filled the criminal law with a mass of technicalities which were invented by the lawyers and the judges to save those guilty of minor offenses from extreme punishments. But mitigation of punishment, with a system of criminal procedure filled with technicalities, that made for delay, brought no relief, and it was not until the English people about seventy-five years ago reformed their criminal procedure so as to make prosecutions prompt, efficient, certain and final, that crime began to decrease and law came to be respected.

This reform was not accomplished without a long period of discussion and education. It took the people of England nearly the lifetime of three generations to accomplish the result of a substantial correction. And one of the significant incidents of this effort for reform was that it was accomplished in spite of opposition of many leaders of the legal profession and of the judges, some of whom felt so strongly upon the matter that they threatened to resign if the reform measures were passed. This does not mean that the lawyers and judges of that country and of that time were other than high-minded, able men, but it emphasizes the fact that it is natural that members of any profession, feeling proud of its achievements and more or less responsible for the system of which they are a part, resent criticism of it or suggestions for its change. And so at the present time we find in this country that many public-spirited and able men in the profession and in official positions have placed themselves in opposition to proposals of reform of our existing system of criminal procedure claiming that the cause of our trouble is to be found elsewhere, or that it is entirely due to the weaknesses or the fault of public officials charged with the administration of criminal justice.

The purpose of this section of the survey is to point out and to give the reasons in favor of the changes which will make for promptness, certainty and finality in the administration of criminal justice. In making these suggestions we have endeavored to give due recognition to the force of tradition and the natural conservatism of the legal profession by not proposing changes that would substantially alter the general plan and purpose of our existing system, or the present organization and jurisdiction of our courts. The changes proposed are not based on the assumption that no innocent man was ever prosecuted or convicted, or that injustice is not sometimes done to both guilty and innocent. A guilty man has as much right to be tried in accordance with a fair system fairly administered as has an innocent man to an acquittal. That guilty men will escape under any system, it is hardly necessary to say, and that an innocent man will sometimes be convicted under any system is also true. The conviction of innocent men can, however, be regarded as a most unusual result. During the ten years that the writer has spent in the public service in positions which brought him into intimate contact with the execution of our criminal laws, he had personal knowledge of the facts in some 3,000 criminal cases, and he never knew of but one innocent man who was convicted. Punishment in this case we were fortunately able to prevent.

Changes in our system of criminal procedure should be such as to furnish the largest number of necessary safeguards to the innocent and also to give the largest percentage of convictions of the guilty. First of all we should understand that a system of criminal procedure should be judged as a plan of social engineering by the results it produces. The public should endeavor to consider such a system in the abstract and not according to isolated instances of injustice in a few cases. While naturally conservative as to any proposed changes in an existing system of law, the American people are apt to be emotionally moved in favor of this change or that by isolated instances. Thus Missouri, in company with a few other states, abolished capital punishment, and then changed back to the earlier system by reason of a few atrocious murders. Likewise it is easy to secure legislation increasing the severity of punishment or strengthening our rules of procedure if some vicious crimes are committed and acquittals inflame the public mind, while it is difficult to secure needed legislation if some court or jury has, in public opinion, dealt harshly or unfairly with defendants. This public psychology makes difficult orderly and scientific progress in working out this problem, and it further emphasizes the importance of the work of organizations such as this whose investigations, free from prejudice or personal interest, cover such an extended period and number of cases as to constitute a dependable basis of confident judgment.

In the consideration of suggested changes we should have in mind the two theories on which codes of criminal procedure are founded: first, there is the theory that a code of criminal procedure should be framed primarily for the protection of the citizen against possible injustice and oppression by the state; second, there is the theory that a code of criminal procedure should provide for such a judicial investigation of a charge of crime as will lead to a prompt and definite decision as to guilt and punishment in order that society may thereby be protected against its enemies. It can be fairly stated that the code of criminal procedure that now obtains in Missouri and in most of our states belongs to the first class, although present conditions demand that the second theory should obtain if society is effectively to protect itself against its enemies.

Most of the provisions governing criminal procedure have come down to us as an inheritance from English law established in a period when, as a French writer has well said, almost every line of the substantive and procedural law of crimes was dripping with blood. The necessity of protecting political offenders against oppression and all offenders against the severity and barbarity of punishment, then provided for, resulted in a conspiracy of mercy on the part of courts and lawyers through hypertechnical constructions of indictments and all matters of law and procedure. The decisions expressing this technical attitude have become a part of our law and their effect has been to hamper and in many instances to nullify the power of the state in its efforts to enforce its laws. And in this country we have further impaired the administration of justice by reducing the authority of the trial judges and allowing an unlimited right of appeal for technical review by the appellate court with liberty on bond pending its decision.

On the other hand, our experience has demonstrated that some rights not now accorded to defendants should be given to them in the interests of equal justice and for the protection of the innocent. Changes in our existing procedure should go to equalize the rights of society and of the defendants in the conduct of a trial and to eliminate such provisions as tend to make it a contest of skill and ability between opposing counsel rather than a judicial investigation to ascertain the truth.

The suggested changes in furtherance of this purpose will naturally divide themselves into two classes: first, those improving existing laws and practices but not introducing any substantial departure therefrom; and, second, those introducing more sweeping changes based upon the experience of other countries, the statistically demonstrated weaknesses of our own system and the best judgment of those who have given this subject careful and unbiased consideration.

Honorable Jesse W. Barrett, Attorney-General of Missouri, from 1920 to 1924, has been requested to discuss the first class of changes referred to, for which work he is well qualified by reason of his recent services as Attorney-General. The proposed changes which will be dealt with by Mr. Barrett are as follows:

1. Defendant's consent to delay to deprive him of right to discharge for delay in trial.
2. Shortening time for appeals by requiring bill of exceptions in three months.
3. Making separate trials on joint indictments a matter of discretion for court.
4. Equalizing peremptory challenges of defendants and state.
5. Full cross-examination permitted when a witness testifies at all.
6. Provision for public defender or appointed counsel.

Mr. Barrett's discussion of these changes which do not mark substantial departures from present conditions is in the paragraphs immediately following.

PROCEDURAL CHANGES TO BE EFFECTED BY AMENDMENT OF EXISTING STATUTES

A number of specific changes in existing statutes may be suggested which, though not a substantial departure from existing rules and practices, will nevertheless work material improvement. The chief obstacles to their immediate adoption will probably be found in the fact that while greatly needed in the centers of population, the need may not be felt nor generally understood in other parts of the state. Using the term "the cities" to refer to St. Louis and Kansas City particularly, and "the counties" to describe the smaller towns and country districts, it may be remarked that there is a wide difference between the cities and the counties in the conditions to be met. In the counties, the jurors are usually men active in the life of the community and well acquainted with the witnesses and the accused.

Even before the trial begins, they are possessed of a certain degree of knowledge regarding the case which they will later apply in reaching a just decision. In the cities, the jurors are strangers not only to the participants in the trial, but also to each other. In the counties, the criminals dealt with are rarely of the dangerous or hardened sort, and almost never are they a part of an established criminal organization. In the cities the condition has been described by Judge Marcus Kavanaugh of Chicago as follows:

> "The characteristics of crime and criminals in the United States are altogether different from what they were fifty years ago. Our procedural law is required to meet not only a new kind of criminal, but also one with entirely different methods, tactics and closely organized confederates for both attack and defense. Yet these evil-minded men have no respect for the law because they know the chances are three to one they will never be arrested if they kill, twelve to one they will never be convicted and more than a hundred to one that they will not die for their crime."

The men in Missouri best qualified to judge the present defects in our criminal law are those who are charged with the official duty of administering and enforcing it. With this in mind, The Missouri Association for Criminal Justice has submitted to the circuit judges and prosecuting attorneys a questionnaire embodying a number of the changes here discussed. The replies illustrate what has just been said regarding the difference between conditions in the cities and those in the counties. On many points the circuit judges of the two larger cities are unanimous in recommending a change which to the majority of the judges in the counties seems unnecessary or even unwise. This report, however, is written with the consideration of the state as a whole, and we think it obvious that we must adjust and strengthen the machinery so that it will function efficiently even at the points of greatest strain.

Effect of Defendant's Consent to Delay.

There is now a statute which provides that the defendant shall be discharged if not tried before the end of the second term of court after the indictment is filed, unless the delay shall happen upon the application of the prisoner, or shall be occasioned by the want of time to try the cause at such second term.[1] It happens many times, however, that continuances occur with the consent of both the state and the defendant, and for some reason which made the delay desirable for both. The statute, of course, should exclude delays which happen "on the application of the prisoner *or by his consent.*" This change has the overwhelming approval of the circuit judges, only one reply to the questionnaire expressing any opposition thereto.

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[1] R. S. Mo. 1919, Sec. 4040.

Three Months to Perfect Appeal.

Our present statute now provides that in felony cases (Sec. 4107) appeal must be perfected within twelve months from the time within which the appeal is granted and misdemeanor appeals (Sec. 4108) must be perfected within six months. There is no reason why the time for perfecting appeals in each instance should not be shortened to three months, and to this suggestion the circuit judges of Missouri register their approval by a vote of 40 to 3, and the prosecuting attorneys approve by a vote of 68 to 7. Every one familiar with the trial of criminal cases knows the advantage which comes to the defendant by delay. If a convicted man can secure a new trial and can postpone the second hearing until several years after the original offense, a second conviction is most difficult to obtain. The state's witnesses may have died or have moved to other jurisdictions. The prosecuting officers will probably have passed out of office and have been succeeded by men not familiar with the case. Public sentiment against the accused has died down. A delay of a whole year in perfecting an appeal obstructs justice. Three months for the appeal gives ample time to anyone wrongly convicted.

Separate Trials on Joint Indictments.

Under the present Missouri statute (Sec. 4004) when two or more defendants are jointly indicted for any felony, any one of them may demand and secure a separate trial. It must be admitted that there are many times when a separate trial is due to a particular defendant as a matter of justice, but it must also be conceded that in many other instances a separate trial for each joint defendant puts the state to unnecessary expense and delay and imposes an unfair handicap. It is impossible to fix by statute a hard and fast rule applying with equal justice to all cases. The question of whether a separate trial should be allowed is one which should be addressed to the discretion of the court and the statute should be amended so to provide. Upon this point the circuit judges of Missouri have expressed their approval by a vote of 37 to 4.

Peremptory Challenges.

The jury problem is at present still greatly aggravated by the unfair apportionment of peremptory challenges between the defendant and the state. Under the present law (Sec. 4017), the ratio in most instances is two to one; in other words, the state is allowed to apply the peremptory challenge to the extent of only half the number given to the accused. The number of peremptory challenges now allowed defendants is in most cases so large as to enable the defendant to exclude from the jury many of the more intelligent men upon the panel. It would seem that justice would be fully guaranteed by giving the state and the accused six peremptory challenges each in all cases punishable by death or life imprisonment; four peremptory challenges each in all cases punishable by imprisonment in the penitentiary, and three peremptory challenges each in all other cases. This suggestion has been approved by the circuit judges by a vote of 37 to 6, and the prosecuting attorneys have approved it by a vote of 66 to 9.

The State's Right to Cross-Examination.

Another needed change is with respect to the right of the state to cross-examine a defendant who has testified in his own behalf. Under the present law (Sec. 4036) the statute provides that the accused may testify and so may also the husband or wife of the accused, but that their cross-examination shall be limited to matters referred to in their examination-in-chief. For instance, an accused man can take the stand and testify as to the fact that he is married and has a certain number of dependent children. On cross-examination, the state cannot ask a single question relating to the issues of the case. It is frequently possible for the accused to single out certain points for testimony which tend to prejudice and mislead the jury unless cross-examination is permitted on the entire case. When the accused or the wife or husband of the accused has chosen to take the stand and offer defense testimony, it should be permissible for the state to question the witness as to all facts within his or her knowledge. This recommendation was also submitted to the circuit judges and they have approved it by a vote of 39 to 4.

Counsel for Poor Defendants.

A complaint justly made against the present system is its failure to provide adequately for those unable to employ counsel. In striving for a just system of criminal law, we are necessarily as much concerned with the rights of the accused as with the rights of the state. The practice in Missouri at the present time is for the court to appoint a lawyer to defend those who, because of poverty, are unable to employ an attorney of their own. In many jurisdictions these appointments are customarily given to beginners at the bar who do not have the requisite experience for the proper protection of their new client. Certainly this should be corrected. There should be a provision for the appointment or election of a capable lawyer as public defender for those needing his services. In the larger cities there should be created such an officer and the need for his services would occupy his full time. In the counties, a different provision would be necessary, for the need would be much less frequent. There, provision might be made for a fund out of which competent lawyers could be employed as needed, or the situation might be met in another way by having a single official serve for each judicial circuit. The details need not be considered in this report. It is sufficient to recommend that some adequate provision be made which will guarantee the equal rights of the poor.

The "Double Shuffle."

Under the present practice, it has frequently happened that defendants who have been convicted, but released on bail pending appeal, have failed to prosecute their appeal and the appellate courts therefore have been unaware that any appeal had been taken. The local officers, meanwhile, thinking the case transferred to the appellate court have given it no further attention. This defect in the procedure has been termed "the double shuffle" and makes it possible for a convicted man to remain unpunished indefinitely unless the facts are discovered. When the writer was Attorney-General of Missouri, he instituted an investigation and found that the appeals of several hundred convicted men had thus been lost sight of. Through the co-operation of the prosecuting attorneys, it was possible to examine the records for several years back and have the appellate courts enter orders dismissing all appeals which had not been perfected in the time allowed, after which, of course, these criminals were compelled to serve out their sentences. Of course a situation of this importance should not be left to chance vigilance of the public officers. The statute should clearly provide that whenever an appeal is allowed, formal notice should be sent at once by the prosecuting attorneys to the attorney-general and to the appellate court, and that a record be kept so that no case can be lost sight of.

FUNDAMENTAL CHANGES IN PROCEDURE[1]

Public Statement and Examination of Accused.

> Every person charged with a felony shall, without unnecessary delay after his arrest, be taken before a magistrate or other judicial officer, and after being informed as to his rights shall be given an opportunity publicly to make any statement and may answer any questions regarding the charge.

The opening incident of a criminal prosecution is the arrest of the defendant. With the method or details of the arrest this report has nothing to do. But following the arrest, within a reasonable time the defendant should be given an opportunity for a public statement and examination, before an examining magistrate, after being advised as to his rights. Such a privilege will generally not be taken advantage of by one who is guilty, but if it is the statement he will make will furnish the prosecution an opportunity to prepare effectively for his prosecution; and to an innocent man such a hearing will furnish an opportunity to declare his innocence and probably to escape prosecution. It will also tend to prevent the use of those oppressive methods of examination which are generally designated as the "third degree." While such practices have not been usual or offensive in this state, they have occurred and their reoccurrence should be prevented if possible. Such an examination is provided for by the laws of England and it has worked effectively in that country as have similar hearings in some of our states to accomplish results which are beneficial to the innocent and in no way unjust to the guilty.

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[1] From this point the report is the work of Chancellor Hadley.

Sufficiency of Indictment or Information.

> Prosecution for crime may be either by indictment or information. It will be sufficient in either case to name or otherwise state the offense to be charged. The court for good cause shown shall require the filing of a bill of particulars.

The constitution of Missouri provides that the prosecution shall be by indictment or information and that they shall be concurrent methods of prosecution.[1] The laws of Missouri provide that in felony cases the defendant shall be entitled to a preliminary hearing before an examining magistrate,[2] but the result of the preliminary hearing does not, as in some states, determine the right of prosecution. The change suggested is as to the form of the indictment or information. The Supreme Court of Missouri has interpreted our constitution as providing for the common law form of indictment and information as they existed in England in the fourth year of the reign of James I of England, which was in the year of Grace 1607. There have been much controversy and many decisions in this state as to the technical sufficiency of indictments and informations upon which defendants have been convicted. During the course of ten years, as reported in this Survey by Judge Grimm, the Supreme Court of Missouri reversed and remanded for new trial some twenty-eight cases by reason of technical defects in indictments or informations. By these decisions a number of murderers, rapists, bribe givers and bribe takers have escaped deserved punishment and many of the re-trials failed to result in convictions. It can be fairly stated that not a single one of the errors complained of for which any of these twenty-eight cases were reversed substantially affected the merits of the cases or deprived the defendants of any rights which they should have enjoyed under a fair system of criminal procedure. This statement does not mean to criticize personally the judges who rendered these decisions, many of whom were personal friends of the writer with whom he lived for eight years on terms of personal and official intimacy and regard. But we do mean to criticize and to condemn as vigorously as possible the practice of glorifying formalism and technicality, which existed for many years in this and other states. It was a system that developed quite naturally as the result of conditions affecting our criminal procedure to which we have already referred, and it was maintained because until recent years its evil consequences had not impressed themselves upon the minds of the public, the legal profession or public officials. We had become so accustomed to consider the maintenance of the system with all of its technical rules and traditions as the proposition of importance that we failed to evaluate it on the common sense basis of the results which it produced. An indictment or information which advises the defendant of the nature and cause of the accusation against him in plain and concise terms, or which advises him of the nature of the offense with a right to a bill of particulars, if requested, fully complies with our constitution and furnishes the defendant with full protection against injustice. Some thirty-four states have already adopted such provisions, and it would seem that the time has clearly come for such a change in our laws in Missouri.

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[1] Art. 2, Sec. 12.

[2] Laws Mo., 1913, p. 225.

The Taking of Depositions by the State.

> The defendant and the state shall be entitled to legal process to secure the attendance of witnesses and each may, if the presence of a witness cannot be secured, take the deposition of such witness whether within or without the state, under such conditions to be fixed by the court as will protect the rights of the defendant. Both the state and the defendant may use the testimony of any competent witness who has testified at any hearing of said charge, providing said testimony was given in the presence of the defendant with an opportunity for him to cross-examine such witness. The court may also under such conditions as will protect the rights of the defendant permit the state or the defendant to take the deposition of a witness within its jurisdiction, upon a showing that said witness is likely to leave said jurisdiction before the trial of said case.

Under the present laws of Missouri a defendant can take the deposition of witnesses either within or without the state under substantially the same rules as obtain in civil cases, but the state does not enjoy this privilege. Difficulty arises from the fact that the state constitution provides that the defendant shall be confronted by the witnesses against him. If this should be construed to mean that the defendant must be confronted *before the jury* by the witnesses against him, to give the state the right to take depositions would require a constitutional amendment. But as this has not been the construction generally given to such a provision in other states, where the same question has arisen, we feel that the state should be given the right to take depositions of witnesses who are likely to leave the state or who have left the state and whose testimony is thus unavailable at the trial. Some provision can and should be made by which, if the defendant is at liberty on bond, the testimony should be taken in his presence, and provision also should be made so that the witness could be subject to cross-examination by counsel. Laws should also be enacted permitting the introduction of testimony given in the presence of the defendant, either before an examining magistrate or at the trial in the circuit court, to be introduced as evidence upon another trial without showing that such witness was absent through the connivance of the defendant, which is the present requirement necessary to the introduction of such testimony. The right to take depositions is provided for in some states, and while the change is not one of major importance in the correction of our system of criminal procedure it would result in the prevention of many miscarriages of justice.

If the states would, under the provisions of the Federal Constitution, enter into reciprocal agreements for the extradition of witnesses, the necessity for such change would be largely obviated. Such agreements have been made by a number of the New England states and under their operation the prevention of acquittals in many cases is thus accomplished.

The Defendant as a Witness.

> The defendant shall be a competent witness in his own behalf, and if he testifies shall be subject to cross-examination as any other witness. If defendant fails to testify as witness, his failure to do so may be commented on by the court and counsel in their statements to the jury.

Under our laws a defendant can testify in his own behalf, but he is not subject to cross-examination as are other witnesses in that he cannot be cross-examined upon any point on which he does not testify in his direct examination, and his failure to testify broadly or his failure to testify at all cannot be commented upon by the court or counsel. During the ten-year period for which decisions of the Supreme Court were investigated by Judge Grimm, it was found that 80 convictions were reversed or reversed and remanded because the Supreme Court felt the defendant had been too broadly cross-examined, or that the prosecutor had directly or indirectly referred to the fact that the defendant did not testify at all. How many new trials have been granted to defendants for such reasons by trial courts we cannot of course know, but it is a safe assertion to say that they are as numerous as the reversals by the Supreme Court for the same cause. Neither of these rules is supported by common sense or logic, and neither exists in any other system of criminal procedure. The fact that these rules seem so difficult of enforcement is a strong argument in support of the contention that they should not exist at all.

But aside from the errors that the existing rules seem to inject into criminal trials, they must be regarded as relics of bygone conditions—as rules established for reasons which no longer obtain. Prior to the Revolution of 1688 a defendant in England was required to submit to an examination, and torture was frequently resorted to to compel him to talk; but by the Revolution of 1688 this was changed. In the interests of justice and in imitation of the rule of civil law, which disqualified an interested party as a witness, the defendant was denied the right to testify at all; and being denied the right to testify it was as a matter of fairness provided, of course, that his failure to do so should not be commented upon to his disadvantage. We no longer deny the accused the right to testify, but we keep the other provision which went with that denial and grant him immunity not only from testifying but from comment for his failure to do so. Thus a rule, which at its inception was a protest against torture and in the interests of justice, has now become one of the most effective methods for the protection of the guilty. What could be more logical and sensible than to ask the defendant, who knows more about the question of his guilt than any one else, what he has to say, and if he will not tell what he knows why should not the state have the right to comment upon his failure to do so. If a criminal trial is to become a judicial investigation to determine the truth, both of these rules should be changed. Their retention can be justified only by meaningless tradition and the idea that a criminal trial should be a contest of skill and ability between counsel for the state and the defendant with the chances in favor of the accused.

The Effect of the Presumption of Innocence.

> The defendant shall be presumed to be innocent of the offense charged, and the indictment or information shall not be considered

> as evidence of guilt, but the effect of this presumption shall be only to place upon the state the burden of proving him guilty beyond reasonable doubt, and the court shall so instruct the jury.

The presumption of innocence of one charged with crime and the burden of proving him guilty beyond a reasonable doubt constitutes another rule of criminal procedure that is found in no other system of jurisprudence. This rule is, however, so generally regarded as of fundamental importance that it is in a sense a part of our civilization, and we have no disposition to advocate its abolition even though it arose out of a condition of royal oppression and tyranny and the desire of the English people to protect the citizen against possible official injustice. It is the manner in which instructions in favor of the defendant have grown and accumulated in the interpretation of this rule that requires such a statutory enactment as is herein suggested. The instructions now given in criminal cases with reference to the presumption of innocence and the necessity of proving guilt beyond a reasonable doubt presents the defendant as an injured and innocent party for whose prosecution the state should be called upon to explain if not to apologize. If the jury is advised by the court that the effect of the presumption of innocence is simply to place upon the state the burden of proving guilt beyond a reasonable doubt, the rights of the innocent will be protected and the chances of the guilty to go free will be decreased.

The Judge's Participation in the Trial.

> In the conduct of the trial, including the examination of witnesses, the judge shall have the same powers as at common law. He shall instruct the jury as to the law applicable to the case and in said instructions may make such comments on the evidence and the testimony and character of any witness as, in his opinion, the interests of justice may require,—provided, however, that the failure of the court to instruct on any point of law shall not be ground for setting aside a verdict of the jury unless such instruction is requested by the defendant. Such instructions and comments by the trial court shall be reduced to writing, before delivery, unless a stenographic record is made at the time of delivery.

The most important change that we suggest in our criminal procedure is that to the trial judge be given the powers that he had at common law. Under our present system he is made a mere moderator at the trial with power to preserve order in the court room, to rule in a formal way upon objections to testimony and to instruct the jury in writing as to the law. At common law the judge was the directing and controlling influence at the trial. He still occupies this position in England and Canada and in our Federal courts. He has the right to examine a witness, if he thinks such examination is necessary, to elicit the truth. He has the right to advise the jury upon the facts, to express an opinion thereon and as to the credibility of witnesses, and to advise them, as he has under our system, as to the law. Thus it is apparent that under our present system the jury receive their advice as to the facts only from the arguments of opposing counsel. The result of this practice is that the strong and able lawyer often dominates the jury perhaps to the extent of bringing about an actual miscarriage of justice. The absence of disinterested expert and authoritative advice to the jury as to the facts thus tends to make the trial a test of skill and ability between opposing counsel rather than a judicial investigation to ascertain the truth. It also results in a glorification of success in the legal profession, without a very careful consideration as to how success is secured. It results in short, in the trial of the lawyers by the jury, instead of the trial of the case. If expert authority had the place in our system of procedure that it should have in any judicial system, then the right to advise as to the facts should be restored to the trial judges. The fact should be emphasized that to give to the trial judges in our state courts such authority would restore the system of jury trials as it was established and developed by our English ancestors and as it continued in this country for a longer number of years than has the perversion of the original system which now obtains in some forty states. We emphasize this point for the further reason that there is now pending in the National Congress a bill to take away from the judges of the Federal courts the right to advise the jury in reference to the evidence and the credibility of witnesses. In support of this measure certain partisan but uninformed parties have contended that this bill would restore the "time tried and time honored" usage of trial by jury which had been broken down through the usurpations of power incident to the Federal practice. This statement is made notwithstanding the fact that trial by jury at common law always included the advice and the assistance of the court in passing upon the facts. The Supreme Court of the United States in the case of Capital Traction Company vs. Hof (174 U. S. 1) states this proposition as follows:

> " 'Trial by Jury,' in the primary and usual sense of the term at the common law and in the American Constitution, is not merely a trial by a jury of twelve men before an officer vested with authority to cause them to be summoned and impaneled, to administer oaths to them and to the constable in charge, and to enter judgment and issue execution on their verdict; but it is a trial by a jury of twelve men, in the presence and under the superintendence of a judge empowered to

> instruct them on the law and to advise them on the facts, and (except on acquittal of a criminal charge) to set aside their verdict if in his opinion it is against the law or the evidence. The proposition has been so generally admitted, and so seldom contested, that there has been little occasion for its distinct assertion. Yet there are unequivocal statements of it to be found in the books."

And Professor Thayer, one of our notable commentators both upon the history and the theory of our law said upon the same subject:

> "It is not too much to say of any period, in all English history, that it is impossible to conceive of trial by jury as existing there in a form which would withhold from the jury the assistance of the court in dealing with the facts. Trial by jury, in such a form as that, is not trial by jury in any historic sense of the words. It is not the venerated institution which attracted the praise of Blackstone and of our ancestors, but something novel, modern and much less to be respected."

These two statements conclusively establish that our present system is the deviation from the "time tried and time honored" trial by jury. The reasons for the departure from this original system are difficult of definite ascertainment. The influence of the lawyers in the state legislatures and the fear of official oppression have been the dominant ones. With the presiding judge as a mere moderator, the ability of the lawyer to win his cases by methods not necessarily dishonorable or unfair but by skill in the trial, industry and personal influence is naturally greater than it would be if the judge had the authority as an expert but disinterested public official to advise the jury as to the probative value of testimony. The right to trial by jury is secured in our Federal courts by the Federal constitution, and in our state courts by our state constitutions. In some forty states laws have been enacted prohibiting the trial judge from advising the jury as to the facts or expressing an opinion upon the credibility of witnesses. In view of the clearly recognized nature of trial by jury which is safeguarded by these constitutional provisions, the constitutionality of these enactments might well be brought into question. They have, of course, been accepted by the trial judges as binding limitations upon their authority. It is clear, however, that if these prohibitory laws were repealed in these forty states, then the trial judge would under the provision of the state constitution have the right to advise the jury upon the facts, as he does upon the law. The restoration of this right to the trial court has been opposed upon the argument that the possession of such a power on the part of the Federal judges has at times been abused. There is no question but what this is true, but any power given to any public official may be abused. The power to pardon and parole convicted defendants has been abused by executives far more often than has the power of the Federal courts to instruct juries upon the facts, but with this difference,—that the power to grant pardons and paroles has been frequently abused to defeat justice, while the power possessed by the judges to instruct the jury upon the facts, even when unfairly exercised, has usually resulted simply in the conviction of guilty men. And yet no one advocates that the power of pardons and paroles should be taken away from our governors because occasionally some governor has abused the power. It is further submitted that the danger of such an abuse of authority by a Federal judge enjoying a life tenure of office, subject only to the danger of impeachment, is far more likely to occur than by the judge of one of our state courts whose term of office rarely exceeds a period of six to ten years. It is also interesting to note, so far as our own state is concerned, that a majority of the circuit judges who answered the inquiry as to their opinion upon this point declared in favor of giving to the trial judges the right to advise upon the facts as upon the law. This is the most important change that we could make in our criminal procedure. While it is true that it would limit the authority and effectiveness of the so-called trial lawyer who hopes to win his cases by emotional appeals to the jury and by the introduction of diverting influences not affecting the merits of the case, it would work to the establishment of an impartial dominating and directing influence in the conduct of the case which would go to establish a stern sense of justice both in the court room and in the minds of the public as a whole.

Modification of Rules Concerning Verdicts.

> In all felony cases a five-sixths verdict of a jury shall be sufficient to convict, except in cases where death may be the penalty imposed, and in which cases the verdict of the jury must be unanimous. In misdemeanor cases, triable before a jury, the jury shall consist of six, and a five-sixths verdict shall be sufficient to convict. The defendant, in any case except where the death penalty may be imposed, may waive a trial by jury and have the case tried by the court. In all jury trials, only the question of guilt shall be decided by the jury, and the trial judge shall fix such punishment as may be authorized by law. Before sentence the judge shall be advised of the defendant's criminal record so far as obtainable, and may seek information as to his mental condition.

In all except one state in the Union, and that the state of Louisiana, there must be an unanimous verdict in felony cases. An unanimous verdict has always been an incident in trial by jury under the common law. Such provision is found, however, in no other system. Under the Roman Law and in procedures in countries of continental Europe and Scotland only a majority verdict is necessary for decision. Many mistrials and miscarriages of justice result from one or two men through stubbornness or dishonest motives setting up their judgment as against the judgment of their associates. It is rather difficult definitely to say what were the reasons for unanimity in jury verdicts under our common law system. By some it is ascribed to the fact that originally the jurors passed upon the case more as witnesses than as triers of issues of fact. But whatever the reason, under conditions of the present day, when there is slight danger of oppression or even of the conviction of the innocent, a law providing for quotient verdicts would be a helpful change in the administration of justice, although the requirement for unanimity should be continued in all cases where the death penalty may be imposed. Also in all cases, except where the death penalty may be imposed, the defendant should be given the right to waive a trial by jury, and in all jury trials except those in which the death penalty may be imposed the question of guilt or innocence should be decided by the jury and the trial judge should determine the punishment. The reasons in support of these contentions naturally suggest themselves to any intelligent man and need not be restated.

Before sentence the judge can and should advise himself of the defendant's criminal record as far as obtainable, and he can also secure expert advice as to the defendant's mental condition, where apparently it is sufficiently abnormal so as to constitute a fact which should be considered in mitigation of punishment. Such problems can be investigated and dealt with by a judge where they cannot well be considered by a jury.

The Rules Governing Appeals.

> A defendant shall have the right to appeal to an appellate court following a verdict and judgment of guilty. The appellate court shall, on appeal, in addition to the issues raised by the defendant, consider and pass upon all rulings of the trial court adverse to the state which it may be requested to pass upon by the prosecuting officer of the county or the Attorney-General of the state. The state may also prosecute an appeal by the prosecuting officer or by the Attorney-General of the state from any adverse rulings or decision of the trial court, except a verdict and judgment of not guilty. On the hearing of an appeal a judgment of conviction shall not be reversed on the ground of misdirection of the jury or rejection of evidence, or for error as to any matter of pleading or procedure, unless in the opinion of the appellate court, after an examination of the record

> before the court it shall appear that the error complained of has resulted in a miscarriage of justice.
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> The appellate court may call witnesses or receive affidavits in reference to any controverted question of fact relating to the procedure in the trial, or may call upon the trial court to examine into and correct a statement in reference to such matter of procedure. In all appeals, typewritten transcripts of the record and typewritten briefs may be used by permission of the appellate court. In case the appellate court considers the punishment fixed is excessive, it may reduce it without remanding the case for new trial.
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> In all capital cases the record must be reviewed by the highest court of appeal. If the defendant be found by the trial court unable to pay the expense of an appeal, the expense of the appeal, together with a reasonable attorney fee to be fixed by the court, shall be paid by the county in which the crime was committed.

There are various propositions incident to the consideration of the case on appeal that are involved in the changes here suggested. Under our present practice practically all of the appeals have been taken by the defendants and consequently all of the questions that have been presented to the appellate courts for decision have been questions in which it is claimed the rights of the defendants have been unfairly dealt with. Thus the rights of society have been "whittled away" by the decisions of the appellate courts because the complaints that the prosecution might have presented to the appellate courts as to adverse rulings by the trial court have not arisen for decision. Therefore in any appeal that is prosecuted by the defendant the state should have the right to ask for a ruling by the appellate court upon any adverse decisions during the trial, as it should also enjoy a right of appeal from any verdict or judgment other than that of "not guilty." Many cases are reversed for mere omissions or incorrect statements in the record as to what happened in the procedure of the trial. Such decisions evidence a mere glorification of formalism. Where a question arises as to whether a defendant was in fact arraigned, whether the jury was sworn, whether he was asked before sentence whether he had anything to say as to why sentence should not be imposed upon him, the Supreme Court should have the power either to direct the trial court to correct the record or to receive testimony or affidavits to determine that issue. It should also be possible, in the interest of promptness and fairness to defendants of limited means that typewritten transcripts and briefs should be considered instead of printed records. And in all cases where death is the penalty imposed the state should require that the entire record be sent to the appellate court for review. If we are to maintain a system of unlimited appeals it does seem that the state, in the interest of justice, should require that its highest court of review should make certain that due process of law has been accorded to any one sentenced to death as the result of the trial. It also seems that if the appellate court considers punishment fixed to be excessive, it should have the right to reduce it without remanding the case for new trial.

Our present system of appeals in criminal cases is another departure from the common law procedure as originally established and as it existed in England up until 1907. The right of appeal was given in this country as the result of concern as to official oppression and for the further purpose of developing a system of criminal jurisprudence applicable to our own conditions of life. We should not consider advocating that the right of appeal in criminal cases be abolished or even limited, as it is not only a part of our political system but is practically a part of our civilization. Yet certain changes would work for improvement in the administration of criminal justice. The right of appeal together with the technical attitude that for a long period of years was taken by appellate courts towards record of conviction has operated strongly towards the emphasizing of technicality and formalism, and what is known as the "sporting theory" of justice. Often the question of importance in the trial of a criminal case has seemed to be whether in all regards the rules of procedure were complied with rather than whether justice has been done. If the Supreme Courts of the country would adopt the rule herein suggested, that no case should be reversed except that it affirmatively appeared that some error had been committed by the trial court that had produced a miscarriage of justice, then we believe that next to restoring the original power of the trial judges more good would result than from any other one change. It is in the power of the appellate court judges of this country under such a provision to bring about changes which will affect the whole spirit and purpose of the administration of criminal justice. Under our present system, the fear of reversal has hung as a sword of Damocles over the head of prosecutor and of trial judge. It made the former disposed to compromise with defendants by accepting pleas of guilty to minor offenses rather than to risk the uncertainty of a trial and the danger of reversal even if conviction was secured; and it has caused the trial judges to be hesitant to rule against the defendants lest reversal would result from such ruling to the defeat of justice and to the discredit of their own record as a judicial officer. If the hypertechnical attitude that has obtained in so many jurisdictions on the part of appellate courts could be changed into the real purpose to see whether the defendant was done any real injustice in the trial, a greatly improved condition in the administration of criminal justice would be brought about.

The effect of a highly technical attitude towards records of conviction is evidenced by the statistics presented by Judge Grimm in this survey. His examination of our Supreme Court decisions for the period 1915 to 1925 showed that the entire number of appeals considered by the court was 745. Of these 325 were reversed, or reversed and remanded. The writer examined the record of reversals and affirmances for the four years, 1913-1916, and also examined as to the number of reversals and affirmances in nine other states for the same period, and the average percentage of cases reversed, or reversed and remanded was 31%. This varied from 15% in Massachusetts to nearly 50% in Michigan. The demoralizing influences of such a high percentage of reversals by appellate courts extends, as has been stated, far beyond the cases directly affected. It emphasizes the element of technical procedure and the necessity of conforming thereto as the important consideration of criminal trials. And we shall never reach a satisfactory administration of criminal justice in this country until our courts come to place the substance above the form and to regard the question as to whether justice has been done as more important than whether some technical rule of procedure has been violated.

Control Over and Responsibility for the Nolle Prosequi.

> After an indictment has been returned or an information filed in a court of record, there shall be no nolle prosequi entered except on a written statement of the prosecutor, giving his reasons therefor. If, in the opinion of the trial court, such reasons are not sufficient to justify such action, the judge can refuse to enter said dismissal or he may make a further investigation as to whether such case should be prosecuted. If the trial judge decides that such prosecution shall continue, he shall have the authority, if he thinks the interests of justice require it, to appoint a special prosecutor to conduct said case.

Another result of making the trial judge merely a moderator at the trial has been to emphasize the authority over criminal prosecutions of the public prosecutor. While this official should, of course, be given large and definite authority in the conduct of criminal prosecutions, yet when an indictment or information is filed in court its disposition is a matter as to which the prosecutor and the judge should both have something to say. This Survey, as well as investigations in other cities and states, has shown that the dismissal of criminal prosecutions raises a large question as to how well the prosecutors are performing their duty.[1] We feel that no honest and capable prosecutor should be unwilling to submit the reasons why he does not desire further to prosecute the case to the trial judge, and if he should be unwilling to do so he should be required to do so. As the prosecutor is usually far less mature and experienced than the trial judge, the latter should have a right to pass judgment upon a request for dismissal. If the situation presents only a difference of opinion, the prosecutor would generally be willing to continue the prosecution. If it presents, in the opinion of the trial judge, a dereliction of duty upon the part of the prosecutor, he should have the right of further investigation, and if necessary to appoint a special prosecutor for the conduct of the case.

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[1] See Criminal Justice in Cleveland, pp. 144 and 180.

Insanity as a Defense.

A. Whenever a person under indictment desires to offer a plea of insanity he shall present such plea ten days before trial or such time thereafter as the court may direct.

B. If a defendant when brought to trial for a criminal offense appears to the court to be or is claimed by his counsel to be insane, so that he cannot understand the proceedings against him or assist in his defense, the question of his sanity shall first be determined and if he is found to be insane he shall not be tried, but shall be confined in a proper institution. If later he is found to be sane, he shall then be brought before the court on the original charge and the prosecution shall not be prejudiced by such lapse of time.

C. Whenever in the trial of a criminal case the defense of insanity at the time of the commission of the criminal act is raised, the judge of the trial court may call one or more disinterested qualified experts, not exceeding three, to testify at the trial and if the judge does so, he shall notify counsel for both the prosecution and defense of the witnesses so called, giving their names and addresses. On the trial of the case, the witnesses so called by the court may be examined by counsel for the prosecution and defense. Such calling of witnesses by the court shall not preclude the prosecution or defense from calling other expert witnesses at the trial. The witnesses called by the judge shall be allowed such fees as, in the discretion of the judge, may seem just and reasonable, having regard to the services performed by the witnesses. The fees so allowed shall be paid by the county where the indictment was found.

D. Whenever in any indictment or information a person is charged with a criminal offense arising out of some act or omission, and it is given in evidence on the trial of such person for the offense that he was insane at the time when the alleged act or omission occurred, then if the jury before whom such person is tried concludes that he did the act or made the omission, but by reason of his insanity was not guilty according to law for the crime charged, then the jury shall return a special verdict that the accused did the act or made the

> omission but was not guilty of the crime charged by reason of his insanity.
>
> E. When the special verdict provided for in Section D is found, the court shall immediately order an inquisition to determine whether the prisoner is at the time insane, so as to be a menace to the public safety. If it is found that the prisoner is not insane as aforesaid, then he shall be immediately discharged from custody. If he is found to be insane as aforesaid, then the judge shall order that he be committed to the state hospital for the insane to be confined there until he has so far regained his sanity, that he is no longer a menace to the public safety.

There is no question in the criminal law that presents more complicated and difficult problems than the defense of insanity. In this discussion only a few fundamental propositions can be stated and briefly discussed. The report, which is contained in this Survey of Dr. Bliss and his Committee of the Missouri State Medical Association has clearly presented some of the important phases of this question and the attitude of the organized medical profession towards the unscrupulous expert who is willing to sell his opinions for a fee.

One of the difficulties of dealing with the defense of insanity is that the legal test of insanity is not the medical test. Or stated in other terms, one whom a physician might regard as mentally impaired might under the legal test of insanity be held responsible for his acts; and, conversely, one whom the law as interpreted by a jury might regard as not responsible for his acts by reason of insanity, a capable and honest physician would unhesitatingly declare sane.

If it can be accomplished under our constitutions, Federal and state, a defendant should be required to advise in advance of the trial of a plea of insanity as a defense to a criminal charge. If the plea is that the defendant is then insane, logically and legally that question should be tried and decided before the trial on the charge preferred for the manifest reason that since an insane man cannot know his rights or prepare his defense his mental capacity should be examined into and determined before the law imposes on him something he cannot do. How this question should be determined is one on which doctors and lawyers might differ, but it seems to the writer that it should be determined as any issue of fact by a jury of twelve men, under the advice and direction of the trial court.

If the defendant is found sane or his plea is that he was insane when he committed the crime but now sane, the issue of his insanity should be determined in the trial for the offense charged. And to aid the jury in the determination of such issue the trial court should be empowered to appoint one or more expert physicians to examine the defendant and to testify as the court's witnesses. The state and the defendant would, of course, have the constitutional right to summon other witnesses. If it is claimed that the defendant has become insane after conviction, the court should have the right to summon experts in mental diseases to examine the defendant, and if there seems to be reasonable ground for such a contention the issue should be submitted to a jury for decision. But a defendant thus found insane should be confined, and if he should subsequently be adjudged sane the original sentence should be carried out. If a defendant should be found insane prior to trial, he should also be confined and prosecuted if subsequently his sanity is restored. Confusion and controversy in the administration of the criminal law will always result in dealing with the question of legal irresponsibility, because the determination of the fact is so largely a matter of opinion. And in the expression of such opinions the dishonest medical expert has had no limitations on his disposition to contribute to the defeat of justice. The chief evil of the plea of insanity occurs through its use as a method of introducing the defense of the "unwritten law." Under this plea a defendant can bring before the jury all the facts and circumstances, if it is a homicide case as it usually is, affecting his relations with the deceased in an effort to make the jury believe that the deceased should have been killed. As the deceased cannot testify the advantage in such a controversy is all in favor of the defendant. Nothing could more clearly show the need of giving the trial court the right to assist the jury in deciding as to the facts than the usual conduct and result of such a case. If the judge is restored to his former position of authority, the difficulties of the plea of insanity will be largely corrected.

Conclusion

The changes here proposed would, in a large measure, give to our procedure the provisions that characterize the procedure in Canada and England, where the law is respected and methods of prosecution, combining promptness, certainty and finality, are a restraining influence to those disposed to crime. The adoption of these provisions would not, of course, result in the conviction of all the guilty and the protection of all the innocent, but it would beyond question tend to the accomplishment of this result. In addition to the supporting testimony based on actual experience in favor of these changes, they are favored by the judgment of those who have given this subject their careful thought and investigation. During the last three years the writer has been connected with committees of the American Law Institute, the American Bar Association and the National Crime

Commission, which have made a special study and investigation of the defects in our system of criminal justice and how to correct them. The conclusions of those with whom we have worked in these professional and public activities are in favor of the changes proposed. As the members of these committees include teachers, practitioners and public officials who have given years of study with actual experience in dealing with these questions, their opinions represent the best considered and most authoritative statements that are to be found on this subject. But no sensible man contends that, with such a marked improvement of our system of criminal procedure as it is believed these changes would bring, we are shortly or even in a few years to reach a satisfactory condition of law enforcement in this country. Much work of education and correction along other lines must be done. But a system of procedure that makes for justice through the prompt, efficient and final adjudication of cases will greatly help to develop a correct public opinion, a stern sense of justice and a respect for law upon the part of the general public, which must in the final test be the foundation upon which society can depend for its safety and its existence.

PART IX

RECORD SYSTEMS

By

JAMES E. BOGGS
Formerly President Missouri Circuit Clerks Association
and
WILLIAM C. JAMISON

ADVISORY COMMITTEE

Richard R. Nacy	Jefferson City
Emmett J. Crouse	St. Joseph
Henry C. Kirchner	Clayton
D. B. Womacks	Kansas City

RECORD SYSTEMS

INTRODUCTION

A somewhat difficult problem is presented in the determination of the means by which the records dealing with criminal law enforcement may be placed upon a sound basis; that is, a basis that will afford an accurate measure of the efficiency with which these laws are enforced. The difficulty lies, not in the nature of the records, but in the administrative problems involved. In a well-organized administrative scheme a central authority is constituted which controls and directs all subordinate units and which receives from such units all necessary information for intelligent and effective direction, not only of the individual unit, but of the group as a whole. No such scheme is employed in Missouri to administer or record the work of the law enforcement agencies.

The county is the unit of organization and within each county the police, sheriffs, coroners, prosecuting attorneys and courts enforce the law. To secure effective county enforcement close co-operation of these several officials is essential, yet, except in rare instances, no such co-operation exists. On the contrary they function almost independently of each other with a consequent loss in effectiveness and power. No provision whatever is made to co-ordinate the counties in order to secure uniform state-wide law enforcement. It is this lack of cohesion that makes difficult the establishment of a comprehensive system of records by which the efficiency of the several enforcing agencies may be measured.

The present lack of unification is reflected in the methods now used to record the activities of the county officials. Each maintains his own records, quite often inadequately, frequently negligently kept, and usually with no regard to inter-related records of other officials. The consequent inability to fix responsibility for failure is a distinct and serious deterrent to effective law enforcement. A source of information should be provided from which accurate data may be secured as to how the several agencies involved are performing the duties delegated to them by the state. Such information available to both citizens and officials would tend to counteract the present tendency towards laxity in enforcing the law.

Before discussing the method to be employed to make such data available, it is necessary to consider the facts now recorded, the present methods of record keeping, and to indicate additional information that should be kept and certain changes in the present routine of recording. In other sections of this survey the records kept by police, sheriffs, coroners and prosecuting attorneys have been described in some detail. We have to consider, therefore, for those offices, only the records that reflect their activities in the apprehension and punishment of those who violate the law. A somewhat more extended study of the records in preliminary and circuit courts is necessary.

The Sheriff's Records

Our investigation discloses the fact that the sheriffs, as a class, are lax in keeping their records. No attempt is made to record the number of crimes reported to him nor his actions on such complaints. He does not record the number of arrests he makes and the final disposition of the persons arrested. There is usually a fair record of the receipt and disbursement of money collected and for criminal cases a jail record is kept. But the criminal records in the average sheriff's office fail to disclose any facts with reference to the prisoner. Sheriffs are also lax in filing reports of their actions in criminal causes with the clerks of the circuit or criminal court. The result is that the record in the clerk's office ends with the record of the conviction of the prisoner.

The sheriff should be required to keep a record of the number of crimes committed which are reported to him, the nature of the crime, and his action on the complaint. He should keep a complete record of each arrest made by him which should show the name of the defendant; when arrested; for what crime arrested; if released on bond, the amount of bond given, and the sureties; if convicted, the crime for which convicted and the punishment assessed; the date of delivery of the certificate of conviction by the clerk; if committed to jail, the date committed; if fined, the date of payment of fine or the date of imprisonment for non-payment of fine, and finally the date of discharge from jail and for what reason discharged.

The sheriff should also be required to make return of the certificate of conviction delivered to him by the clerk, showing in detail how it was executed.

Police Records

For our purposes it is only necessary to require that the police keep much the same records required of the sheriffs. That is, the number and nature of crimes committed which are reported to them and their action on such complaints, the number of arrests made, the nature of crimes leading to such arrests, and the disposition of the prisoner.

CORONER'S RECORDS

The coroner's duties in relation to the criminal process are confined to homicide cases. Consequently very little record-keeping is required of that officer. He should on receiving notice of a death, apparently due to a criminal act, report the same promptly to the sheriff and he should be required to file with the circuit clerk a transcript of the evidence presented at any inquest in which the commission of a crime is indicated.

PROSECUTING ATTORNEY'S RECORDS

Much of the work of this officer is now on record in the preliminary and circuit courts, and it is only necessary to require that he keep supplementary records to reflect certain of his actions that are not now a matter of court record. Such records should contain the following information:

1. Number and nature of crimes reported to him.
2. Number of warrants issued on such complaints.
3. Number of warrants applied for by police and sheriff.
    a. Number issued.
    b. Number refused.
4. Number of cases submitted to grand jury.
    a. Number of indictments voted.
    b. Number of "no true bills" returned.
5. Number of cases bound over in preliminary hearings on which no further action is taken.

JUSTICE COURT RECORDS IN MISDEMEANORS

Investigation covering 35 counties shows that justices of the peace keep their records in "dockets," which are furnished by the county and are the only records required by law to be kept by them. In most instances these dockets fairly show the proceedings had before the justice. In nearly all counties the dockets are kept in bound books and are written in longhand. In only a few counties are the records typewritten.

There is no law requiring a justice of the peace to state his reasons for dismissing a case.

In misdemeanor cases, when a fine is assessed, the justice files a report with the county treasurer and county clerk, for the sole purpose of enabling the county court to keep a check on the amount of fines collected by the constables. In such cases no report is made to the circuit clerk. However, in case the fine is not paid, the justice files a transcript in the clerk's office, for the purpose of collecting fees from the county. In cases where a jail sentence is imposed by the justice, no report is made to the county treasurer and county clerk, but a transcript of judgment is filed in the office of the circuit clerk, for the purpose of collecting fees. No report whatever is made to the prosecuting attorney in any case.

For the purpose of concentrating all criminal records in the office of the clerk of the criminal or circuit court, it is suggested that when a case is disposed of in a justice court, the justice be required to file a report in the office of the clerk of the criminal or circuit court. This report should contain the name of the defendant, his general description, the offense charged, the date of arrest, whether he was discharged upon motion of the prosecuting attorney or by the action of the justice, and if punished, the date convicted, the nature of such punishment and the execution thereof.[1]

JUSTICE COURT RECORDS IN FELONIES

Outside of the City of St. Louis, preliminary examinations in felony cases are by law required to be held by justices of the peace, who are referred to in the statutes as examining magistrates. In the City of St. Louis preliminary examinations are held by the Court of Criminal Correction.

Reports furnished by enumerators for the Association, covering 35 counties, show that in 28 of these counties the magistrates keep a record of prisoners discharged on preliminary examination, but in only fifteen of these 28 counties do the records give any information as to the reasons for the discharge of prisoners, and the reasons given in these counties are only "no probable cause," "lack of evidence," "failure of proof," or "dismissed by prosecuting attorney." Probably the reason for this is that the law does not require the examining magistrate to state his reasons for discharging a prisoner. It simply provides that "if upon examination of the whole matter, it appear to the magistrate either that no offense has been committed by any person, or that there is no probable cause for charging the prisoner therewith, he shall discharge such prisoner." [2] Another reason may be that when a prisoner is discharged, the magistrate receives no fee for his services. He therefore spends as little time as possible making a record.

If at the preliminary examination the defendant is bound over the magistrate is required to file a transcript of his docket, together with the recognizance of the defendant, in the office of the circuit clerk. This is required to be done on or before the first day of the next term of court, unless the defendant is committed to jail, in which case the transcript must accompany the commitment and be delivered therewith to the jailer.[1]

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[1] See p. 555 for specimen form.

[2] R. S. Mo. 1919, Sec. 3827.

These transcripts constitute the only check that the prosecuting attorney and clerk have on cases bound over by the magistrates, and when a magistrate fails to file his transcript, as is often the case, there is no check whatever.

If the present system of holding preliminary examinations is to continue, we make the following suggestions:

1. That the magistrate be required to enter on his docket his reasons, at greater length than is now required, for the discharge of prisoners. As an inducement to the magistrate to keep a complete record of each case, he should not be deprived of his fee in case a prisoner is discharged.

2. That the magistrate be required to file with the circuit clerk, within ten days after the disposition of the case, a report of such disposition, containing substantially the same information as in misdemeanor cases, and also, within the same time, to file a duplicate of such report with the prosecuting attorney. This report should be in addition to the transcript now required by law, and for this service a reasonable fee should be allowed.

3. Transcripts of preliminary examination should be filed within ten days after the examination, instead of being filed on the first day of court as is now required, and for his service in holding preliminary examination the magistrate should be allowed a uniform fee at least to the average sum of the separate items now taxed.

Transfer Preliminary Examination from Justices

We are of the opinion that the entire system of preliminary examinations should be changed. The justices of the peace, as the examining magistrates, should be dispensed with, and the duty of holding preliminary examinations should be placed either upon the clerk of the circuit or criminal court, or upon a commissioner appointed by the circuit court, as is now the practice in Federal courts. To accomplish this purpose, R. S. 1919, Article V, Chapter 25, would have to be amended.

Questionnaires sent to 114 counties were replied to by 100 clerks on this question. The change was approved by 62 clerks and disapproved by 32. Four were noncommittal and did not care to express an opinion. One suggested that the duty be placed upon the probate judge, and one suggested that some central court should be established for the purpose.

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[1] R. S. Mo. 1919, Sec. 2834.

If this change is made, provision should be made for a stipulated fee in each case. This fee should be paid whether the defendant be held or discharged, and the clerk receiving the same should not have to account for it in his settlements. It should be paid him as an extra fee for extra services performed.

CIRCUIT COURT RECORDS

The circuit courts and criminal courts of Missouri are courts of record and have supervising control of the justice and police courts within their respective jurisdictions. They have jurisdiction of appeals from the justice and police courts in their respective counties and have jurisdiction in criminal cases of all classes. Appeals from judgments rendered by them may be taken to the Appellate and Supreme Courts.

The permanent criminal records are kept in the offices of the clerks of the circuit courts. In those offices the justices of the peace are required to file transcripts of preliminary examinations when the defendant is bound over. They are also required to file transcripts in misdemeanor cases for the purpose of taxation of costs.

To determine exactly what records are kept by circuit clerks throughout the state and the general form in which these records are kept a questionnaire containing twenty-five questions was sent to the 114 circuit clerks of the state asking for such information. Ninety-eight replies were received, and the following is a summary of their statements concerning their methods of keeping records:[1]

> 73 clerks, out of 107 reporting, state that they do not keep a book separate from the record or minute book in which indictments and informations are entered when filed. 34 reply that they keep such a book.
>
> 74 clerks, out of 105 reporting, state that they have a permanent number system in their office. 31 do not have such a system.
>
> 107 clerks reply to the question relating to the method of preserving papers in their offices. Of this number 79 clerks keep the court papers in jackets, 13 in envelopes, 5 in wrappers, one in rolls and 9 merely put the court papers in boxes unwrapped.
>
> To the question as to what information is contained on case wrappers 95 replies were received. It is almost impossible to tabulate these replies. No two clerks have the same information on the jackets or

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[1] According to the replies received 11,704 cases were filed in 1923 and 1924 in 98 offices (not including St. Louis, Kansas City, St. Joseph, Joplin, Carthage and Springfield). See page 558 for list of counties and number of cases filed in each.

wrappers except that all have the number of the case and the name of the defendant. In some cases the crime is shown and a few clerks state whether the proceedings were instituted by indictment or information. In only a few instances is full information carried on the wrappers.

63 clerks, out of 106 replying, keep their civil and criminal cases separate. 43 clerks keep their papers all together.

72 clerks, out of 107 replying, use different colored jackets or envelopes for civil and criminal cases. 35 do not.

53 clerks, out of 107 replying, index their criminal cases separately, using what they call "a criminal index." 54 have no separate index.

90 clerks, out of 106 replying, have a general index book. 16 carry the indices in the separate records.

53 clerks, out of 102 replying, have, in addition to their general index book, a separate index in each record book, while 49 do not index their record book.

94 clerks, out of 107 replying, keep all proceedings, both civil and criminal, in one record. 13 clerks keep their civil and criminal records in separate books.

78 clerks, out of 107 replying, keep typewritten records. 29 keep their records in longhand. 76 use loose-leaf record books and 31 still use the bound records.

42 clerks, out of 107 replying, keep a separate parole record, while 65 keep the record of paroles in their general record book.

In 47 counties, out of 104 replying, the judge keeps a parole docket, while in 57 counties no such docket is kept.

On the question as to whom fines are paid replies were received from 107 clerks showing payments as follows: to the circuit clerk, 62; to the sheriff, 20; to the prosecuting attorney, 1; to sheriff and clerk, 13; to prosecuting attorney and clerk, 1; to prosecuting attorney, sheriff and clerk, 3; county treasurer, 7.

53 clerks, out of 106 replying, state that when a defendant is fined, or sentenced to jail a certified copy of the record is delivered to the sheriff, and 54 clerks do not deliver such certified copy.

53 clerks, out of 105 replying, state that the sheriff makes a return on commitments and criminal fee bills. 52 sheriffs make no return whatever.

50 clerks, out of 106 replying, state that their records show when a jail sentence has been completed or fine paid. 56 state that their records are silent on this point.

16 clerks, out of 106 replying, state that the sheriff files in the clerk's office a receipt showing delivery of the prisoner to the penitentiary or other institution. 90 state that no such receipt is filed.

61 clerks, out of 106 replying, state that when a stay of execution is granted they carry the case on the court docket until the matter is finally disposed of. 45 do not.

77 clerks, out of 106 replying, state that they keep a criminal cost book. 29 keep no record of criminal costs except the papers filed in the case.

In the matter of relief of insolvent prisoners, under Revised Statutes, 1919, Article 20, Chapter 25, the statute is complied with in 44 counties. It is ignored in 60.

29 clerks, out of 85 replying, state that in case of relief of insolvent prisoners under Revised Statutes, 1919, Article 20, Chapter 25, their records show the length of time the prisoner has served, while in 56 cases there is no record as to the time served in jail by the prisoner.

An Abstract of Criminal Cases.

As disclosed by the replies received to the questionnaires, 73 clerks in the state do not keep a separate record in which indictments and informations are entered when filed. These clerks enter the indictments and informations in the minute book of the court from which they are transferred to the permanent record. In 74 counties the clerks of circuit courts use a permanent numbering system in their offices and 90 clerks have a general index for their records. The clerks in only a few counties have what is known as an abstract book, which contains a brief history of the filing of indictments and informations and of the various steps taken in criminal cases. The index systems in use in the various courts are not kept in efficient form. In only a few counties are complete indices kept.

Various indexing and numbering systems are in use. In some offices the cases are numbered beginning with number one at each term. In other offices two numbers are used, one of which is known as the docket number and one as the permanent number, the permanent number being the number given the case when it is finally disposed of and filed away. In most of the counties having permanent numbers for the case a number is given each case when it is filed and this number is never changed. While, as shown in the replies to the questionnaires, 31 counties have no numbering systems, it would be neither difficult nor expensive to install numbering systems in these offices. It would be unnecessary to re-index the cases already filed away. The number system could be started at any time. The numbering system renders it not only easy to find cases but as each paper in the case bears a case number it is not so likely to become misplaced.

As a first step in rendering available the information in criminal cases there should be installed in each clerk's office a criminal abstract record or card, which should contain in substance the following information:[1]

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[1] See page 554 for specimen form.

1. The number of the case and the date of the filing of the information or indictment.
2. The name of the defendant, color, age and sex.
3. The offense charged.
4. The date of preliminary hearing, the amount of bond, the sureties thereon, and by whom taken.
5. The disposition in the circuit court classified as follows:
    a. Change of venue.
    b. Dismissed by prosecuting attorney.
    c. Discharged by court.
    d. Acquitted by jury.
    e. Bond forfeited defendant at large.
    f. Other dispositions freeing defendant without punishment.
    g. Punished.
        a. After trial by jury.
        b. On pleas of guilty.
    h. Appeal allowed.
        a. Appeal not perfected and dismissed.
    i. Mitigations of sentence by trial judge.
6. The date of the delivery of the prisoner to jail or other penal institution.
7. Date of release from the institution or jail, or payment of fine.
8. By whom released, whether by court order or pardon board.
9. References as to book and page of the permanent court records.

Such an abstract may be kept in book form or on cards. When the card system is used it becomes its own index.

The Cott Index.

In connection with this abstract there should also be a complete index. The most efficient and simple index is known as the "Cott Index." This is in use in Boone, Pettis and Jasper Counties. In this index it is necessary to enter the name of the defendant only once. All cases in which the defendant is a party are placed on the same line. If the index is used for both civil and criminal cases the criminal case numbers may be written in red.[1]

The numbers used on the index are the numbers of the cases as they appear on the abstract book. It is not necessary in this index to set out the book and page of the permanent record as this information can be taken from the abstract book. Under this system cases may be very easily found.

In some counties both civil and criminal cases are kept in separate index books. Unless the court has a criminal division there is no reason for this. Where civil and criminal cases are handled in the same court the criminal cases may as well be kept in the general index book and distinguished from civil cases by red ink as above suggested. There is no reason why criminal cases should bear a separate series of numbers. However, these matters should be determined by the clerk of each court.

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[1] The principle of the Cott Indexing system is shown on pages 556-557.

The Case Papers and Their Wrapper.

On the question as to what information is contained on the wrappers, 95 replies were received to the questionnaire. It is almost impossible to tabulate these replies for the reason that each clerk enters different information on the wrapper of the case.

R. S. 1919, Sec. 2330, provides that clerks of the several courts of record shall, within thirty days after the expiration of each term of court, attach the pleadings and other papers forming the record in every case in which a final judgment shall have been returned at such term, and Sec. 2331 provides that the clerk shall make on the margin of each pleading and paper so attached, a memorandum of all orders and entries in relation thereto, and at the end of the documents attach a memorandum of the judgment, giving book, page and other information.

Under the modern method of keeping records the requirement that the clerk shall attach the papers together and make on each separate pleading a notation as to its disposition and that they shall attach a memorandum to the files showing the judgment and the book and page, is wholly unnecessary. This provision of the law should be amended, especially as refers to criminal cases, so that the clerk of the circuit and criminal courts would be required to keep the papers in durable jackets, wrappers or envelopes, upon the outside of which should appear the number of the case and the style thereof and the offense charged, and such additional information as may be deemed necessary by the clerk of the court. This number of the case will be the same number as appears on the abstract book or card, and from the abstract book or card all necessary information can be obtained. As a matter of fact, very few clerks now comply with this provision of the law.

A Parole Docket.

As shown in the replies to the questionnaires, in only 47 counties in the state does the circuit judge keep a parole docket. Inasmuch as a parole must, of necessity, remain on the docket for a long period of time, the judge should keep on his desk a parole docket in which should be entered the name of the defendant and other facts concerning him, the terms of the parole, the date of his parole, with separate space for the report that is made each term by the paroled prisoner. This, of course, would not dispense with the record that is made by the clerk when the prisoner comes up at each term of court. The judge's parole docket merely affords the judge the opportunity of keeping always in touch with his paroled prisoners.[1]

In Jackson County paroles are granted by a parole board, composed of circuit judges who are allowed extra compensation for serving on the board. They have a separate clerk and separate office. Parole cases are kept in this office and have separate numbers. The clerk of the criminal division of the circuit court has no knowledge of when any defendant sentenced in his court has been paroled, or any knowledge of when the parole has been revoked, or when the defendant has complied with the terms of his parole and has been discharged. In other words, he has no record whatever of what becomes of the case after sentence is passed. In Buchanan County there is a parole board which has a separate clerk, but the records are kept in the circuit clerk's office. In St. Louis County there is a parole board. By law, the circuit clerk is clerk of this board.

In order that all criminal records may be kept in one office it is suggested that where there are separate parole boards the clerk of the circuit or criminal court, as the case may be, should be made the clerk of the parole board; that the law creating the office of clerk of the parole board also provide for adequate compensation to the clerk for such services.

It should be provided by statute that in counties where there are parole boards, when a prisoner is paroled the clerk of the parole board should certify to the circuit or criminal court, or proper division thereof, the fact of such parole, together with the terms and conditions thereof, and these facts should be, by the clerk of the criminal or circuit court, noted on the court record and on the criminal abstract book or card, and the certificate filed among the papers in the case. And further in such cases, when the prisoner is discharged by the parole board, or when his parole is revoked, the fact thereof should be likewise certified to the circuit or criminal court, or proper division thereof, so that the records of the original trial court may be kept complete.

The Collection of Fines.

There seems to be no uniformity in the collection of fines. In some counties even the prosecuting attorney performs this function.

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[1] See p. 554 for specimen form.

It seems to be intended by the law that all fines should be collected by the sheriff. When a sentence is pronounced on a prisoner, either that he pay a fine and in default thereof be committed to jail, or that he be committed to jail for a certain period of time, the clerk should deliver to the sheriff a certificate of the judgment, together with a statement of the costs in the case. With this certificate as his authority the sheriff may either collect from the defendant or commit him to jail. This method simplifies the collection of costs in criminal cases, relieves the clerk of much bookkeeping and makes the sheriff alone responsible for the carrying out of the judgment of the court. The sheriff should keep a book in which proper entries are made showing the date of the receipt of the certificate, the date when the fine was paid, the date when the prisoner was committed to jail and when he was discharged. The sheriff should make a return to the clerk on each certificate showing how he executed the same. From this return the clerk's record will show when a jail sentence has been completed or when a fine has been paid.

The Relief of Insolvents.

R. S. 1919, Chapter 25, Article 20, provides for the relief of insolvents confined on criminal process. Under this statute any person detained in prison for the non-payment of a fine or costs may be ordered to be discharged by the court of judgment, or clerk, after having been imprisoned one day for each $2.00 of such fine and costs, and after having endured twenty days actual imprisonment for the non-payment of costs, if he be unable to pay the same. Under this statute the prisoner is required to file an application with the clerk setting forth the length of time which he has served in jail and accompanied by a schedule of his property. Replies to the questionnaires disclose that this provision of the statute is utterly ignored in 60 counties in Missouri, and even in those counties in which it is attempted to be complied with, strict compliance is not had. As a matter of practice, when a defendant is confined in jail one day for each $2.00 of his fine and has served twenty days on costs, he is discharged by the sheriff without any order from the court or clerk, and therefore the clerk's records do not show the length of time that the prisoner has remained in jail. This statute should be repealed, and a new section enacted providing that when a prisoner has served one day for each $2.00 of his fine and costs, or has endured twenty days actual imprisonment for the non-payment of costs, he should be required to file a statement with the sheriff setting forth the extent of his imprisonment and that the sheriff thereupon should be required to discharge him. The statement filed with the sheriff by the prisoner should be returned to the clerk with the return of the sheriff thereon showing the discharge of such prisoner, and the clerk thereupon should be required to enter on his abstract or card the date of the discharge of the prisoner. R. S. 1919, Secs. 12556 and 12557, giving the prosecuting attorney power to release prisoners from jail should be repealed. This provision of the law for the relief of insolvents confined on criminal process has been carried in the statutes since the time when prisoners could be confined in jail for the non-payment of their debts. It is an impractical and useless formality.

Records of Delivery of Prisoners.

In 90 counties the records of the clerks do not show that the prisoners sentenced to the penitentiary, or other institution, have actually been delivered to such institution. This information should appear on the records of the court. It is suggested that when a prisoner is received at the penitentiary, or other institution, the warden or superintendent of such institution immediately forward to the clerk of the court in which the conviction was had, a certificate showing the receipt of the prisoner. This certificate, when received by the clerk, should be filed among the papers in the case and the date of the receipt of the prisoner at the institution should be entered by the clerk on his criminal abstract book or card. Likewise, when a prisoner confined in the penitentiary, or other penal institution, shall be paroled or pardoned or released for any cause, including completion of his sentence, the warden or superintendent of the institution from which he has been released should certify the fact of the release to the clerk of the trial court, and such facts should be entered on the criminal abstract book or card.

Stays of Execution.

The statute gives to criminal courts the power of granting stays of execution and in 61 counties the cases in which stays of execution are granted by the court are carried on the court docket until the matter is finally disposed of, while in 45 counties no record whatever is made. When a stay of execution is granted the case should remain on the court docket until some disposition is made of the case. The statute concerning stays of execution should be amended so as to require that this be done.

Costs in Criminal Cases

The taxing of criminal costs entails a burden on the clerks of circuit and criminal courts, and on the state auditor, from which those officers should be afforded some relief. Of course there is no escape from the duty of figuring the costs of witnesses and jurors and the costs of the sheriff, justices of the peace and constables. There is an item, however, that may be eliminated. This is the item of fees of circuit and criminal court clerks. The elimination of this one item will save to the clerks and the state auditor considerable time and trouble, and is worth while. Formerly the clerks were fee officers, but for several years they have been on salary, and it is no longer necessary that they claim the numerous small fees that are allowed them by statute. All fees now are paid into the county treasury.

It is suggested that the law be so amended as to place the clerks on a basis similar to that of the prosecuting attorney. That a certain fee be allowed in each case, or class of case, and that the itemized list of fees be abolished. This suggestion was approved by 92 clerks and disapproved by 10.

In connection with the above suggestion each clerk was requested to give the average clerk's fee in his office for the past year in the following classes of cases:

(a) Capital cases.
(b) Homicide in other degrees, rape, arson, burglary, robbery, forgery and counterfeiting.
(c) Other felonies.
(d) Misdemeanors.

To question (a) 43 replies were received, showing the average fee in such cases to be $12.58. To question (b) 72 replies were received, showing the average fee in such cases to be $8.25. To question (c) 71 replies were received, showing the average fee in such cases to be $6.75. To question (d) 77 replies were received, showing the average fee in such cases to be $4.87.

We recommend that a flat fee be taxed in each criminal case as follows:

(a) $15.00
(b) $10.00
(c) $7.50
(d) $5.00

and that these fees be paid whether the defendant be convicted or acquitted. The distinction between clerk's fees accrued on the part of the state and on the part of the defendant should be abolished.

If the law be amended in this respect, it will result in an immense saving of criminal costs, as well as a saving of time to the above officials.

SUMMARY OF INFORMATION REQUIRED

The preceding pages have indicated the information necessary to an understanding of the operation of our criminal process within the county. It may be summarized in the following manner:

1. Number of crimes reported.
2. Number of arrests made.
3. Number of warrants applied for.
    a. Number of warrants refused.
    b. Number of warrants issued.
4. Number of misdemeanors tried in justice courts.
    a. Number of cases dismissed by prosecuting attorney.
    b. Number of cases dismissed by court.
    c. Number of cases punished.
    d. Nature of punishment.
    e. Execution of such punishment.
5. Number of preliminary hearings held in justice courts.
    a. Number of cases dismissed by prosecuting attorney.
    b. Number of cases dismissed by court.
    c. Number of cases punished.
        1. Nature of punishment.
        2. Execution of such punishment.
    d. Number of cases bound over.
6. Number of cases bound over in preliminary hearings and
    a. Presented to grand jury "no true bill" returned.
    b. Prosecuting attorney refused to "reissue" upon.
7. Number of informations filed in circuit court.
8. Number of indictments filed in circuit court.
9. Dispositions in circuit court.
    a. Change of venue.
    b. Dismissed by prosecuting attorney.
    c. Dismissed by court.
    d. Acquitted by jury.
    e. Bond forfeited defendant at large.
    f. Other dispositions freeing defendant without punishment.
    g. Punished.
        1. After trial by jury.
        2. On pleas guilty.
    h. Nature of punishment.
    i. Mitigations of punishments by trial courts.
    j. Execution of punishment.
    k. Number appeals allowed.
        1. Number not perfected and dismissed.

The prosecuting attorneys, sheriffs, coroners, and police should be required to render quarterly reports, in summarized form, of the data to be recorded by them to the clerk of the circuit court. With their summaries and the data filed with him by the justices of the peace the clerk would have available all information necessary for the summarization of criminal cases disposed of within the county, classified as noted above. These requirements of necessity impose some additional labor on the officials mentioned, but with the exception of the circuit clerk the added duties would not be onerous. The great saving of time and labor afforded the latter by the change in taxing criminal costs should more than compensate for the added duties imposed here.

The compilation of such information will definitely fix responsibility for failure to enforce the criminal law. It should be stated, however, that these are rudimentary requirements, and by no means represent all of the data necessary for complete statistical analyses. Therefore, a source of further information has been provided from which may be drawn additional data if desired. That is, data as to persons committing crimes; their nationality, age, sex, color, occupation, education, and residence. Information as to bail bonds; the number and amount given, number and amount forfeited and amounts collected on forfeitures; mitigation of original sentences by trial judges; stays of execution, reductions of fines or terms of imprisonment, paroles and their success or failure.

Appellate and Supreme Court Records

In those criminal causes appealed to higher courts the county loses jurisdiction and the responsibility for the disposition of such cases is vested in the Appellate and Supreme Courts. It is necessary, therefore, to procure from those courts the records to indicate the final disposition of such appealed cases. Such records should contain the following information:

1. Number of appeals perfected.
2. Crime for which convicted.
3. Disposition of cases appealed.
    a. Number affirmed.
    b. Number reversed.
    c. Number reversed and remanded.
4. Average time required to dispose of cases.

State Penal Institution Records

Finally we must determine how our state penal institutions are carrying out the purposes for which they were established. There is little use in vigorously prosecuting and sentencing transgressors if the institutions to which they are committed fail to perform the duties allotted to them. Here, if anywhere, one would expect to find the facts concerning the persons confined therein, tabulated on a comprehensive basis. Such, however, is not the case. On the contrary we find them compiling with meticulous care elaborate records on purchases, sales, shop production, etc., but accumulating very few facts to indicate either the nature of the human material committed to their care or the success of their methods in dealing with that material. There is no apparent reason for the present inadequate recording of this most important phase of their activities.

As to the individuals confined therein there should certainly be compiled such facts as their nationality, color, age, sex, family status, education, occupation, residence, previous criminal record, crime committed, length of sentence, date admitted, date released, and method of release. Progress records should be kept for all prisoners, and for those receiving conditional releases adequate records should be maintained so that it may be possible to determine the success or failure of such released prisoners in meeting the conditions imposed at the time of release.

Periodically there should be reported the total number of prisoners admitted and released, the methods by which they were released and the average length of time they have served, correlated with the length of their original sentence. The method of classifying the various types of release should be standardized and adhered to in the future.

With such a system of records in effect, it becomes possible by a cross-classification to provide scientific bases for studies that should be of material assistance in the elimination of crime at its source, and in addition thereto accurately measure the degree of success attained by these institutions in handling their complicated and perplexing problems.

STATE STATISTICIAN

There now remains the question of compiling these data on a state-wide basis. This may most easily be effected by providing a state officer to whom each circuit clerk, the clerks of the Appellate and Supreme Courts and the heads of penal institutions would report at stated intervals.

Such an officer should be a statistician of recognized ability in his profession, appointed by the governor. He should receive a salary sufficient to attract a man of high capabilities and he should have sole authority in the appointment of his assistants.

On him should be placed the responsibility, and to him should be given the necessary powers, to standardize all records having to do with criminal law enforcement; periodically to summarize, tabulate and analyze the data transmitted to him, and to publish his findings at least twice yearly. Further, he should be empowered to compel prompt reports, at intervals determined by him, from the county and state officials previously designated. To determine the crime cost per county to the tax-payers, the state statistician and the state auditor should be empowered to provide a system of records by means of which this information may be made readily available to the public.

Objections may be raised to vesting these powers in a state official, but it should be taken into consideration that they do not supplant any powers hitherto exercised by other officials and that such an officer does not exercise any supervision over the *acts* of the several officials, but over the methods of recording those acts.

A State Bureau of Criminal Identification

A discussion of the proper means of providing for a comprehensive system of criminal identification, while not directly related to the subject matter of the preceding pages, involves the maintenance of a system of records and therefore is given consideration in this report.

In Missouri there is no central bureau from which police authorities, sheriffs, and the heads of our penal institutions may receive information in regard to persons held in their custody. The only bureaus of identification are maintained by our urban police departments and primarily are designed to meet the requirements of the several municipalities and not those of the state. The identification and apprehension of criminals, however, is not a matter of purely local concern. The criminal of today is able to move rapidly from point to point of attack and his apprehension can not be left solely to the officers of the county in which the crime was committed. Officers of adjoining counties are, of course, handicapped in the performance of their duties by the lack of a means by which suspects held by them may be positively and quickly identified.

It is obvious that maintenance of bureaus of identification in each county would lead to endless duplication of records and prohibitive expense. Yet some method should be adopted to provide county officers with a ready means of identification. Other states confronted with a like situation have solved the problem by establishing state bureaus of criminal identification, and Missouri would do well to provide a similar organization.

Lack of space prevents an extended discussion of all that such bureaus can accomplish but it will be of interest to quote some figures appearing in the report of the bureau in California covering the biennial period ending June 30, 1924. Out of 55,041 delinquents whose finger print records and descriptions were received, 18,713 were identified as having previous criminal records. Of those identified as habitual offenders, 649 were identified as having escaped from penal institutions of which number 616 escaped from institutions in other states.

California was enabled to avoid the expense of criminal trials in the case of the 616 escaped from penal institutions in other states by returning these prisoners to their respective states, while those prisoners identified as having previous records doubtless received more adequate punishment than if they had been regarded as first offenders. Criminals are less ready to operate in communities where they are reasonably sure to be apprehended, identified, their past record brought to light, and adequate punishment assessed. Prisoners with previous records confined in penal institutions are not so readily released by means of parole and commutation on the plea that they are "first offenders and deserve another chance to make good." Such bureaus can help in insuring adequate punishment of repeated offenders, aid in the more rapid apprehension of those who violate the law, and bring county law enforcement officials into closer and more effective co-operation.

If such a bureau is established in Missouri it should be organized under the control of a board or executive responsible to the chief executive of the state. It would be empowered to adopt and use the most complete and systematic methods of identification of criminals, including the Bertillon method, finger print system, modus operandi system or such other system or systems as it might adopt from time to time.

At this bureau would be filed records containing information concerning persons confined in state penal institutions; persons who have been or who may hereafter be convicted within the state for felony or attempted felony or for the violation of any laws of the state of Missouri; all persons imprisoned for the violation of any military, naval, or criminal laws of the United States of America, and all well-known and habitual criminals whenever procurable.

The authorities in charge of our state penal institutions would be required to furnish records, on such basis as should be determined by the bureau, of all prisoners confined therein or who might thereafter be confined for the violation of the laws of the state.

Sheriffs, chiefs of police, and police officers in authority in incorporated villages or towns should be required to furnish the bureau daily copies of finger and thumb prints on standardized cards, and photographs when deemed essential, and comprehensive descriptions of all persons arrested who in the best judgment of such sheriffs, chiefs of police or police officers might be wanted for serious crimes or who might be fugitives from justice; or in whose possession might be found property reasonably believed by such sheriffs, chiefs of police, or police officers to have been stolen by them; or who might possess burglars tools, burglars keys, or explosives reasonably believed to be used for unlawful purposes. They should in like manner furnish the information noted above for those persons arrested by them who, at the time of arrest, have in their possession concealed firearms or other deadly weapons, or paraphernalia used in the counterfeiting of money or bank notes. These provisions should not apply to persons arrested for the violation of city or county ordinances or other trivial offenses.

It should be made the duty of the bureau to keep on file all plates, photographs, outline pictures, measurements, modus operandi statements, information, descriptions, and such other records as might be received by it by nature of its work. The bureau should be required to file the same in a manner providing for convenient consultation and comparison.

On application the bureau should furnish all information in its possession pertaining to the identification of any person or persons to United States officers, or officers of other states and territories, or peace officers of other countries and all peace officers of the state of Missouri, duly authorized to receive the same. The application for such information should be in writing, signed by the officer making such application, stating that the information applied for is in the interest of the due administration of the law and not for the purpose of maliciously or uselessly harrassing or humiliating any person or assisting a private citizen in carrying on his personal interest or in maliciously or uselessly harassing or humiliating anyone.

It should also be provided that any person who should upon trial be acquitted might demand the return of any photograph, photographic plate or proof, finger print impressions, and all duplicates and copies made thereof which were taken pending the action of the court. Any police officer, sheriff, or peace officer, or any member of the police department having any such records under his control and failing to comply with such demand should be deemed guilty of a misdemeanor and an appropriate punishment should be prescribed therefor.

Thus safeguarded against possible abuse a bureau organized on the basis suggested would do much to assist in the administration of criminal justice.

PART X

MENTAL DISORDER, CRIME AND THE LAW

By

M. A. BLISS, M.D.

ADVISORY COMMITTEE

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MENTAL DISORDER, CRIME AND THE LAW

FOREWORD

This report was prepared at the request of The Missouri Association for Criminal Justice by a Committee of the Missouri State Medical Association, the names of the members of which appear below. It was prepared as an integral part of this survey of criminal justice, and as such has been submitted to the same process of editing and of committee consideration as other sections.

In addition to the original research work done by Dr. M. A. Bliss, with the assistance of the said committee, in the preparation of the report that follows, much of the statistical and of the case material has been drawn from three recent surveys conducted in this state, in which Dr. Bliss participated. These investigations were the following:

> A survey made under the auspices of the National Committee for Mental Hygiene by S. W. Hamilton, M. D., and entitled "The Care and Treatment of the Insane in Missouri." (Published as the Monthly Bulletin of the State Board of Charities and Corrections, Vol. 20, No. 2.) In this survey Dr. Hamilton visited every asylum, almshouse, and jail in the state, and the penitentiary.
>
> A study, also under the auspices of the National Committee for Mental Hygiene, of the school children of nine representative counties, of the inmates of the Missouri Reformatory, of the industrial schools, of the Bellefontaine Farms, of the St. Louis Workhouse, and of several orphan homes. (Published as the "Missouri Mental Deficiency Survey with Recommendations, Dr. Thomas H. Haines, Field Consultant," in the Monthly Bulletin of the State Board of Charities and Corrections, Vol. 24, No. 4.)
>
> A study made by a local group guided by Dr. V. V. Anderson of the National Committee for Mental Hygiene at the request of the St. Louis Director of Public Welfare. (Published as the "Report of a Mental Hygiene Survey of Delinquency and Dependency Problems in St. Louis.")

These three studies were made by competent investigators, whose findings are thoroughly scientific. They were, moreover, made so recently that they may be used to give emphasis and confirmation to the conclusions of this report. The report which follows is, however, made by and upon the responsibility of the following committee, and is in large part written by Dr. M. A. Bliss,

A. R. McComas, Sturgeon, Chairman
M. A. Bliss, St. Louis
W. H. Breuer, St. James
W. A. Clark, Jefferson City
T. W. Cotton, Van Buren
W. T. Elam, St. Joseph
W. J. Ferguson, Sedalia
E. J. Goodwin, St. Louis
J. Frank Harrison, Mexico
Jabez N. Jackson, Kansas City
Geo. C. Mosher, Kansas City
Emmett P. North, St. Louis
James Stewart, Jefferson City
Wm. G. Vogt, St. Louis
Committee of the Missouri
State Medical Association.

In the administration of criminal justice "legal insanity" is involved in a large number of cases. The question of irresponsibility on account of mental disorder may arise in many different ways and at several stages in the process of justice. Taken in its entirety it constitutes one of the primary elements in the field with which the Missouri Association for Criminal Justice is concerned.

The specific questions and problems related to "legal insanity" which are raised in any study of the administration of criminal justice include the following:

Is there need for some state agency for the purpose of selecting the mentally unsound from among the persons arrested for criminal offenses? If so, what provision has the State of Missouri made for such selection? On account of the fact that the law distinguishes between mental condition at the time of the offense and at the time of trial, what provision is made for a determination of whether the accused is competent to plead to the charge and to conduct his defense? In the trial what are the means of testing criminal irresponsibility? This being the point where the problem of "expert testimony" arises, what are the possibilities of meeting the recognized evils involved by some provision by the state for a determination of the scientific questions involved? After trial and conviction, what is done to distinguish in penal treatment between those mentally unsound and those who are not?

In answering these questions the authors of this report wish to make clear that they are not attempting to explain all crime by ascribing it to mental disease or defects. They start with the perfectly well established legal rules concerning criminal irresponsibility and attempt to bring into an area where confusion now exists, means which may lessen such confusion and at the same time protect the interests of public security. They are not advocating "sentiment" but science in determining criminal responsibility.

There is ample evidence that the past twenty years have produced sweeping changes in methods of testing mental capacity and soundness. The psychologists have diligently developed, in a severely critical spirit, the discoveries of Binet. The early enthusiasm evoked by systematic methods of mental measurement and the far-reaching deductions that were made on the basis of a fixed mental age, have been much reduced by larger experience and more critical study. The army mental tests reported in Memoir XV of the National Academy of Science give the results of a large scale application of mental measurements. Analysis of the data gathered by C. B.

Davenport, and by Carl C. Bingham, give easy access to this material. During the progress of the Great War an order was issued requiring the mental and psychological examination of soldiers confined to the guard house for A. W. O. L. (absent without official leave). It was found that many of these were mentally defective, or mentally disordered. Sincere and earnest efforts to learn something concerning the physical and mental bases of human behavior are now being made under the stimulus of the Commonwealth Fund in the Child Guidance or psychiatric clinics of St. Louis, Dallas, Los Angeles, Minneapolis, Philadelphia and Cleveland. Everywhere there is going forward experimental scientific work which promises to throw light into one of the darkest corners of criminal law enforcement.

It is already clear that the question is much more complex than is contemplated in the merely legal distinction between the "sane" and the "insane." The following pages show this in the studies of life histories of inmates in the penal institutions of Missouri. There are today in the St. Louis Infirmary individuals who have been in reform schools, jails, workhouses and penitentiaries for the major part of their lives, who could not be termed insane in the sense which the law places on the word, and who by the actual record of their lives show a total inadequacy to conform with usages of the community. They run the gamut of the crimes from petty thievery to murder, are ever and always a menace, and might well be, early in their careers, permanently segregated. Our ideas of "liberty and the pursuit of happiness" and our belief in the all-powerful influence of environment prevent our taking steps to protect the community from jeopardy arising from the presence of such persons.

It may properly be asked if medical science is surely capable of making long forecasts of the lives of such individuals. We may modestly reply that trained physicians with the help of expert psychologists and social investigators can rather readily identify those children and young adults who will be continued problems, and can already, although this work is itself in its early youth, supply very adequate proof of their ability to aid the courts to make the community safer and to make more successful and at the same time more just disposition of the individual. After the demonstration by the National Committee group of the results of medical, psychological and social examinations of St. Louis children, showing behavior problems of more serious kind, the Circuit Judges of St. Louis in general session unanimously advocated the creation of a similar clinic group financed by the city. The general comprehension of this type of work is very limited. Funds for the maintenance of the clinic have been severely limited. Private contributions have been necessary to supplement the budget. It has been necessary for the social agencies to plead with the aldermen to save the very existence of the work. But through such clinical work we shall probably reach a point where we can not only reach a more definite method of dealing with such cases in the courts and in penal institutions, but learn to discover traits in juveniles which may enable us to cut off a considerable amount of crime at its source.

THE BORDERLINE OF MENTAL RESPONSIBILITY

It is not strange that there is a very considerable feeling both in the legal profession and among laymen that there is an altogether too general tendency to permit persons committing criminal acts to escape punishment on grounds of mental disorder. The number of forms of mental disorder recognized by science has grown very rapidly in recent years. Old fashioned "insanity" has come to bear a score of new names, while there have appeared new "borderline" types of mental irresponsibility not recognized when our legal rules were in process of formation. The most important of these new irresponsible or semi-responsible offenders are the feeble-minded and the "constitutional inferiors" or "psychopathic personalities." It will perhaps bring out more clearly the significance of the quantitative facts presented in the body of this report to set forth a brief description of these two kinds of mental disorder and indicate the legal significance of each.

The Feeble-Minded.

The feeble-minded are suffering from mental defect as distinguished from mental disease. Such studies as the "Jukes" by Dugdale, the "Nams" by Esterbrook and Davenport and the "Kallikak Family" by Goddard, are familiar studies of the hereditary character of mental defect and the large number of crimes and other serious evils that follow in its wake. It is especially dangerous because acute transient psychoses occur very frequently among these poorly endowed persons and serious crimes result. Moreover, they are quite susceptible to suggestion and are often exploited by clever criminals and led into criminal ways. The large correlation between feeble-mindedness and crime is shown by studies of prison populations where from 16 to 42.7 per cent have been found defective. The offenses which they most frequently commit are crimes of violence, disorderly conduct and vagrancy, while, of course, they contribute few crimes involving higher intelligence.

There are three grades of feeble-mindedness; idiocy, imbecility and moronity, the latter representing the least retarded mentality.

Methods of determining feeble-mindedness and its degree have been developed to a point of guiding us quite reliably. The mere determination of limitations of mentality does not tell the whole story of the individual. One may be severely limited in mental range and be industrious, loyal to his family, orderly in the community, clean in person and habits, if under kindly and adequate supervision. Another may be vicious, destructive, disorderly and dangerous. A study of the behavior requiring a visit to the home and an inquiry in the neighborhood must often be made. The success with which the varying types may be trained is determined by the character make up as much as by mental age.

Some are practically untrainable and our only protection is permanently to segregate them.

The legal problem involved in cases where mental defectiveness (feeble-mindedness) is shown is very complex. In the United States the courts still hesitate to exempt the mentally defective from criminal responsibility.[1] In England Parliament passed in 1913 "The Mental Deficiency Act" which provides for the care of the feeble-minded who have committed a criminal act. The verdict in such cases is "guilty, but feeble-minded," which does not release these defectives, but places them under the control of the state. Concerning a possible solution of the problem for American courts dealing with these cases, S. S. Glueck suggests:

> "Since there is some scope for the development of capacity and control, in the imbecile and higher classes of mental defect, there are no doubt instances of mental defectives who are to some degree morally chargeable, and who should be legally responsible for their conduct. In the moron and borderline cases there is room for the concept of limited responsibility; but as we have seen, the courts are as yet loath to put much stock in the findings of intelligence tests. There is also room in these cases for some such concept as habitual criminality, the equivalent of the English moral imbecility in the sense of that term as used in the English Mental Deficiency Act, so that when an offense has been repeated once or twice by a moron or borderline (or psychopathic) delinquent, who previously was regarded as being able to get along in a more or less simple environment, and it has been demonstrated that punishment has failed to deter such persons from repeating their offenses, this pragmatic test would justify the law in placing such offenders in an institution or colony for life, regardless of the type of offense done both to society and to the individual, for, under a sheltered, supervised environment, such persons could work and play and on the whole live a useful and happy life; while propagation would be pre-

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[1] See Glueck, Mental Disorder and the Criminal Law. Ch. 7. Also State v. Schilling, 112 Atl. (N. J.) 400, and State v. Craig, 52 Wash. 66.

vented. Moreover, such institutions might be made self-supporting, if the products of the labor of the inmates could be marketed."[2]

Psychopathic Personalities.

This type of the mentally disordered in which the question of responsibility nearly always is subject to argument has caused most of the bitter discussion which has of late marked the consideration of the crime problem by doctors and lawyers. These criminal types called by the French the "demi fous" (semi-insane) are nearly always problems from their infancy. Vindictive, rancorous, cruel to animals and weaker playmates, deceitful, stealing in school, refractory to discipline, incapable of continuity of effort, they later are truants, often gangsters preying on public carriers, and find among the idle and vicious their choice of companionship. They may be quite intelligent but always unreliable, subject to unreasoning bursts of temper, disordered sex habits, superstitious fears and incapacity for self-discipline. In later life they are often frankly insane. Punishment of any kind or degree fails to correct the warped character traits. When they go to prison they usually improve the opportunity to add to their stock of information concerning ways and means of "getting away" with criminal acts. In the St. Louis Workhouse it was found that thirty-seven percent of those examined were of this type. This is in keeping with findings in courts and penal institutions throughout the country. It is the psychopathic individual who furnishes us with our delinquent problem—the unstable, neurotic, poorly balanced, weak-willed individual with marked character defects and personality handicaps, but often with good intelligence, is the most difficult problem we have to meet in handling criminals. The feeble-minded and insane are more readily discovered and more easily segregated. These psychopathic personalities range from eccentric but harmless cranks through the group termed "pathologic liars and swindlers" to the dangerous anti-social persons who are emotionally unresponsive to the feelings of others and are extremely selfish. Many of our repeated offenders belong to this group, namely those committing larceny, robbery, forgery, swindling of various sorts and occasional cruel assaults.

These persons constitute before the law the so-called partially insane who are not exempted from responsibility. In most cases where they commit criminal acts it is difficult to say that their acts were uncontrollable. "They commit criminal acts during transitory episodes of disturbed consciousness." (Glueck). They have, moreover, few of the symptoms popularly associated with the insane, such as delusions or hallucinations. Since so many of these are repeated offenders, however, they should be dealt with by specially devised habitual criminal laws and be subjected to wholly indeterminate incarceration. Here the prescription of the medical profession would be a much more severe dose than even the most critical of his legal brethren.

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[2] Mental Disorder and the Criminal Law, pp. 336-338.

ILLUSTRATIVE CASES

From a large number of individual cases intensively studied in the surveys mentioned above, we have selected a few which fairly illustrate the problems involved in the types of mental disorder described in the foregoing pages. These persons' behavior over a period of years quite clearly indicates an inability to avoid falling into delinquency. Some of these were adults found in the city workhouse, others were children examined at various times by the Child Guidance Clinic.

Feeble-Minded Persons.

THOMAS, a white boy, almost 11 years old, has been troublesome in school for many years. He was transferred to a Special School. He was unable to learn, and during the past year his teacher noted a marked deterioration in the little ability that he did have. In December, 1921, it was necessary to expel him from school, as he was considered a menace to the other children. For several months it had been necessary for the teacher to keep Thomas at her side constantly, otherwise he would, without warning, crouch and spring at the throats of the other children in an animal-like way, holding and choking them until someone intervened. Since his elimination from school he has wandered the streets all day, fighting and begging. It has been impossible for his mother to control him, and she finally reported him to the juvenile court, who requested an examination by the Child Guidance Clinic.

The physical examination revealed a syphilitic condition (Wassermann, 4 plus). The mental diagnosis was "high grade imbecile, having mental abnormality and subject to psychotic outbursts." He was found to be seclusive, impulsive with many abnormal fears, which caused extreme perplexity and confusion.

The social investigation definitely indicated that Thomas could never be cared for in the home. His father has been in extremely poor health (possibly syphilis) for over two years, and the mother is ignorant, very excitable, irritable and unstable. Both parents work in a small tailor shop in the front room of the home, and most of the care of Thomas has rested upon his 14-year-old brother. He is becoming very restless and unhappy under his burden. The income is small and the family has received some assistance from the St. Louis Provident Association and Jewish Alliance. The home consists of only two rooms for the family of five, and is poorly kept.

On the basis of these findings, the clinic recommended that Thomas receive care and treatment in an institution with facilities to care for psychotic children. He was committed to the City Sanitarium by the court.

TOM is an Italian boy, 19 years of age. He was arrested on the charge of rape. He has an old juvenile court record as a "neglected child;" later, truancy from school, being out late nights, and very troublesome in the home and at school. In 1914 he was committed to the Industrial School. After a year in this institution he was paroled. In 1917 he was arrested for selling liquor. In 1919 he was sentenced to the State Reformatory for a year. Since his discharge from this institution he has been repeatedly arrested for other offenses. At present he is under sentence for rape. Though this boy is 19 years old, he has the mind of a 9-year-old child. He is feeble-minded, and will never be able to measure up to normal standards of conduct and behavior. This boy left school at the age of 11, and was unable at that time to write his own name.

HARRIET, 34 years old, a negro woman, started her delinquent career at 9 years. She has been arrested 71 times—22 for larceny, 2 for robbery, 18 for prostitution, 2 for assault, 16 for disturbing the peace, 1 for vagrancy, 5 for violation of the Harrison Drug Act, and others for kidnaping, gambling, etc. Harriet has paid 16 fines ranging from $10 to $200. Her present sentence is for six months in the Workhouse for shoplifting. Harriet's physical examination shows that she is suffering from syphilis. Her mental examination shows that she is feeble-minded. She has the mind of a 7-year-old child, with the judgment, reasoning power, self-control and ability to profit by experience of a little girl rather than a woman.

WALTER is a white boy 22 years of age. He says his occupation is "burglar." Walter had been arrested 38 times, according to the police records. He began his criminal career at the age of 13; 22 times he has been brought before the court for robbery, 4 times for highway robbery, 1 for gambling, and 1 for driving a car without the owner's consent, 5 times for disturbing the peace, 3 times for larceny, 1 for destruction of others' property, 1 for fighting and carrying concealed weapons, and 1 on suspicion of murder. The only sentence he has received is the present one of four months in the Workhouse. There have been four fines of from $25 to $50, and the other charges were disposed of by either being dropped without prosecution or being released by the court because of insufficient evidence. He started his career at the age of 13 when he was brought into the juvenile court for petty larceny. Walter's physical examination shows that he is suffering from a disorder of the ductless glands. His mental examination shows that he has a very marked psychopathic personality, a very definite egoistic make-up, is indolent and shows many character defects. His mental age according to psychological tests is 13 years.

PAUL is a negro man, 26 years of age. The police records show that Paul has been arrested 37 times in the last 7 years. Thirteen times for larceny, 4 times for disturbing the peace, 2 times on suspicion of rape, twice for selling liquor without a license, 5 times for gambling, once on being a deserter from the Army, once for violation of the Conscription Act, once for carrying concealed weapons, once for burglary and larceny, once on suspicion of robbery, twice for idling, once for Federal offense. His present offense is for carrying concealed weapons, and his sentence is 3 months in the Workhouse. This is the fifth time the Workhouse has had him. Other means for correcting his criminal tendencies have been tried. He has served one year in the Missouri Penitentiary for burglary. The court has tried on several occasions to reform him by fining, and has imposed fines ranging from $10 to $100. The physical examination of Paul shows that he is suffering from syphilis, and the mental examination shows that he has the mind of a 10-year-old child.

Psychopathic Personalities.

WILLIAM, white boy of 18 years, was examined at the request of the juvenile court. There were no important findings from the examination given him except a depression in the skull about the size of a dollar was located. X-ray examination of this showed that there was no pressure on the brain. In intelligence he was found to be distinctly subnormal. A very superior ability along mechanical lines was discovered by psychological tests. The psychiatric examination showed a very psychopathic personality. He is sullen, moody, defiant, resentful and has violent temper tantrums. The injury to William's head occurred about four years ago. At that time he heard the doctor tell his mother that the injury might affect him mentally. He now takes great pride in telling of the "hole in his head," and he justifies all of his actions by this.

He was first in juvenile court about a year ago for attempt to steal tools from a garage, and since that time has been on probation. He was referred to the clinic because of his terrific temper outbursts, at which times he has injured others and made many threats of violence. He has manifested these extreme conduct disorders both at home and school during the past year. Although he had been placed in a Special School for Backward Children, he had to be suspended from there in March, 1922, as he was considered dangerous for the other children.

The social investigation showed that William received practically no supervision or disciplining in the home. The father had frequently deserted the family and is brutal in his treatment of them all. He has a definite paranoid make-up (perhaps psychotic), is seclusive, suspicious and resentful, and has also outbursts of temper when he attacks his wife and throws things about. The mother is ignorant, dull, passive and lacking in force and initiative. The children are frequently witnesses to many violent scenes between the parents. There are no recreational, intellectual or religious interests in the home.

From the social, physical and mental examinations, it was quite apparent that William was utilizing his former head injury in making defense for his actions, and was, unconsciously, imitating the cruel tendencies of his father. Both of these reactions are typically defense ones to compensate for his own feelings of inferiority due to his mental subnormality and to obtain for himself the attention he desires.

JOSEPH is a white boy 19 years of age. His case shows well the failure of the juvenile court to deal adequately with him at a period when prevention of his delinquent conduct might have been possible. Though only 19 years of age this boy has a record of 11 arrests extending over the past five years. He was in the City Jail on a charge of murder in July of this year. At the age of 13 we find Joseph a ward of the juvenile court. It was found impossible to deal successfully with him on probation, and when he was 15 years old he was sentenced for one year to the Industrial School. Two years later we find Joseph arrested for highway robbery. The following year we find him arrested for carrying concealed weapons, for which he was fined by the court. During the same year, and four months later, we find him again in the court and arrested for vagrancy. During the following month he was arrested on suspicion of robbery, but was released. Within 30 days he was brought into court again for violating his parole. The court made no disposition, but during the following month returned him to the Bellefontaine Farms. In 1922 we find Joseph arrested again on suspicion of robbery, and released on insufficient evidence. The very next month he was brought into court another time on suspicion of robbery, and released on insufficient evidence. The following month we find Joseph in jail for murder. We have here a boy suffering from syphilis plus a constitutional psychopathic condition. This boy is in need of prolonged institutional care.

ALFRED, white boy 23 years of age. His occupation is that of a huckster. In the last 6 years Alfred has been arrested 16 times. The following is the police record:

		Court Disposition
10- 2-16	Driving car without owner's consent	$25.00
1- 3-17	Suspected larceny	Released
8-15-17	Suspected robbery and larceny	Continued
8-26-17	Suspected stealing auto	No disposition
8-25-18	Suspected selling liquor, no license	No disposition
11-23-20	Suspected highway robbery	Released
1-16-21	Suspected burglary and larceny	Released
3-28-21	Suspected robbery	Released
4- 2-21	Transporting liquor	Warrant refused
4-17-21	Suspected robbery	Released, insufficient evidence
8-20-21	Drunk on street	Released when sober
8-22-21	Suspected robbery and larceny	Released
9-15-21	Suspected burglary	Released
12-27-21	Suspected robbery	Released
12-27-21	Suspected robbery	Released
2- 6-22	Burglary and larceny	Discharged
2-25-22	Suspected robbery	Released, insufficient evidence
4- 9-22	Disturbing the peace	Dropped without prosecution

The physical examination of Alfred showed nothing noteworthy, but the mental examination disclosed a beginning mental disease.

MIKE H., 42 years old, white, has been arrested 75 times. He has used a great many aliases, and has roved all over the country. He has served four terms in the penitentiary for larceny, burglary and manslaughter. In 1908 he was in the San Quentin Prison, for burglary. Following his release from this institution, he "knocked around from pillar to post," irregular working periods. In 1911 he was arrested for manslaughter and sentenced to the California Prison for five years. After leaving the prison he was again arrested in 1915 for burglary, and sentenced to the Missouri Penitentiary for two years. He was paroled from this institution, and in 1918 arrested again for larceny. Returned again to the Missouri Penitentiary for two years. He is now in the City Workhouse, serving a three months' sentence for vagrancy. He has been a dope fiend, a sexual pervert, and at present is suffering from mental disease.

It is a shame to bandy this individual from institution to institution, and give him short terms of confinement. He is in need of treatment under prolonged institutional care.

To supplement these cases we are reproducing herewith a "career chart," indicating in a graphic manner the life history of a "psychopathic personality." Nothing could more clearly illustrate the need for the protection of society against such irresponsible persons and the obvious failure of punishment as now administered to deter them from a career of crime.

CAREER CHART

SHOWING MONTH BY MONTH WHAT HAS HAPPENED IN THE LIFE OF A TYPICAL MENTALLY ABNORMAL INDIVIDUAL STUDIED IN THE SURVEY

AGE	JAN.	FEB.	MARCH	APRIL	MAY	JUNE	JULY	AUG.	SEPT.	OCT.	NOV.	DEC.
1 YEAR							× ×	× ×	× ×	× ×	× ×	× ×
2 "	× ×	× ×	× ×	× ×	× ×	× ×	× ×	× ×	× ×	× ×	× ×	× ×
3 "	× ×	× ×	× ×	× ×	× ×	× ×	× ×	× ×	× ×	× ×	× ×	× ×
4 "	× ×	× ×	× ×	× ×	× ×	× ×	× ×	× ×	× ×	× ×	× ×	× ×
5 "	× ×	× ×	× ×	× ×	× ×	× ×	× ×	× ×	× ×	× ×	× ×	× ×
6 "	× ×	× ×	× ×	× ×	× ×	× ×	× ×	× ×	○ ○	○ ○	○ ○	○ ○
7 "	○ ○	○ ○	○ ○	○ ○	○ ○	○ ○	○ ○	○ ○	○ ○	○ ○	○ ○	○ ○
8 "	○ ○	○ ○	○ ○	○ ○	○ ○	○ ○	○ ○	○ ○	○ ○	○ ○	○ ○	○ ○
9 "	○ ○	○ ○	○ ○	○ ○	○ ○	○ ○	○ ○	○ ○	○ ○	○ ○	○ ○	○ ○
10 "	○ ○	○ ○	○ ○	○ ○	○ ○	○ ○	○ ○	○ ○	○ ○	○ ○	○ ○	○ ○
11 "	○ ○	○ ○	○ ○	○ ○	○ ○	○ ○	○ ○	○ ○	○ ○	○ ○	○ ○	○ ○
12 "	○ ○	○ ○	○ ○	○ ○	○ ○	— —	— —	— —	— —	— —	— —	— —
13 "	— —	— —	— —	— —	— —	— —	— —	— —	— —	— —	— —	— ☆
14 "	✱ ✱	✱ ✱	✱ ✱	✱ ✱	✱ ✱	✱ ✱	✱ ✱	✱ ✱	✱ ✱	✱ ✱	✱ ✱	✱ ✱
15 "	+ +	+ +	+ +	+ +	+ +	+ +	+ +	+ +	☆ ✱	✱ ✱	✱ ✱	✱ ✱
16 "	✱ ✱	✱ ✱	✱ ✱	✱ ✱	✱ ✱	✱ ✱	✱ ✱	✱ ✱	✱ ✱	— —	— —	— —
17 "	— —	— —	— —	— —	— —	☆ +	+ +	+ ☆ —	— —	— —	— —	— —
18 "	— —	— —	— —	— —	— —	— —	— —	— —	— —	— —	— —	— —
19 "	— —	— —	— —	— —	— —	— —	— —	— ☆ +	+ +	+ ☆ +	+ —	— —
20 "	— —	— —	— —	— —	— —	— —	— ☆ ✱	✱ ✱	✱ ✱	✱ ✱	✱ ✱	✱ ☆
21 "	✱ ✱	✱ ✱	✱ ✱	✱ ✱	✱ ✱	✱ ✱	✱ ✱	✱ ✱	✱ ✱	✱ ✱	✱ ✱	✱ ✱
22 "	✱ ✱	— —	— —	— —	— ☆ +	+ +	+ ☆ +	+ ☆ +	+ ☆ +	+ +	+ +	+ ☆ +
23 "	+ +	☆ ☆ +	+ +	☆ ☆ +	+ +	+ ★	★ ★	★ ★	★ ★	★ ★	★ ★	★ ★
24 "	★ ★	★ ★	★ ★	★ ★	★ ★	★ ★	★ ★	★ ★	★ ★	★ ★	★ +	+ +
25 "	+ ☆ +	+ +	☆ +	+ ☆ +	+ +	+ ☆ +	+ +	+ ☆ +	+ ☆ +	+ +	☆ ☆ +	+ +
26 "	+ +	+ +	+ ☆ +	+ ☆ +	☆ ☆ ☆	☆ ☆ ☆	+ ☆ +	☆ ☆ —	— —	— —	— —	— —
27 "	+ +	+ +	+ +	☆ +	+ ☆ +	☆ ☆ +	+ ☆ ✱	✱ ✱	✱			
28 "												

LEGEND

× At Home
○ School
— Employment
+ Unemployment
★ Army
✱ Incarceration for Delinquency or Crime
☆ Arrests

MALE **DIAGNOSIS**—Psychopathic Personality **PERSONALITY**—Egocentric **AGE**—27 years **MENTAL AGE**—14 Years **NATIVITY**—U. S. **OFFENSES**—Robbery, Suspected Larceny, Disturbance of Peace, Larceny.

In the paragraphs included under this heading we shall indicate largely by quotations from the scientific reports above listed the large proportion of mental disorders of various kinds among those adults confined in penal institutions in Missouri. We shall also indicate the forms which these disorders assume. In this we use both quantitative statistical summaries of the kinds and amount of disorders and intensive studies of selected cases. The latter are used for purposes of illustration.

The Missouri Penitentiary.

In Dr. Hamilton's survey of the mental condition of the inmates of the Missouri Penitentiary, to which reference is made above, two groups of male convicts were examined. The first consisted of all those who were referred by the prison physician or the administrative officers of the institution. Some of these were insane, some epileptic, some feeble-minded and a few had only neurological disorders. The other group was the entire membership of the shop in which the lowest grade of work was performed. Many cripples were assigned to work there and a considerable number of men whose mentality was of such a character that they could not do more difficult work. A few women were examined. By an examination of the persons in these two groups Dr. Hamilton was able to determine quite definitely the character of cases which were finding their way into the penitentiary and to study their particular problems. Altogether 230 persons were examined of whom 22, or 9.6%, were found to have a definitely certifiable mental disorder.

It is evident therefore, that there is a considerable number of insane confined at all times in the penitentiary. Dr. Hamilton's opinion was that a thorough study of the entire prison population would bring to light a condition similar to that found in other state prisons. For example, it was found in a recent study that out of 608 consecutive cases admitted to Sing Sing Prison during nine months, 73, or 12% were mentally diseased or deteriorated.

In addition to these definitely insane cases Dr. Hamilton found in the penitentiary a "considerable number of feeble-minded, backward persons not actually feeble-minded, ill-balanced individuals of various sorts, commonly called psychopaths or constitutional inferiors, old alcoholics and drug habituates, etc." The entire number of abnormal individuals in the Missouri Penitentiary is probably not unlike the proportion found in other states of which the following is typical:

Institution	*Percentage exhibiting nervous and mental abnormalities*
Massachusetts State Prison	34%
Sing Sing Prison, New York	59%
New York State Reformatory	58%
Indiana State Prison	45%

The presence of these abnormal people in a prison population brings about all sorts of unhappy conditions. As Dr. Hamilton says: "For the most part these insane men are not happily situated. Other prisoners often jeer them and play on their fears. Some guards appreciate the fact that their abnormal behavior is the result of factors that the individual cannot control and make allowance accordingly, but it has happened more than once that an ignorant overseer or guard has known no better method of handling a difficult insane man than by epithet, blow or kick. Of course such abuse is highly reprehensible, but after all the fault lies primarily in the system. Guards are not appointed because of their knowledge of any branch of nursing, and sickness, whether of stomach or lungs or brain, is a matter for the hospital to deal with, not the prison."

No systematic arrangements exist at the present time for making examinations for mental disorder at the Missouri Penitentiary. The prison physician examines only such convicts as present very obvious signs of mental disease. In many of these cases the presence of mental disease does not bring about the removal of the inmate to the state hospital at Fulton. A number, however, are transferred to Fulton each year. The following table indicates the numbers transferred during a number of two-year periods:

Years	Transferred to Fulton
1915-1916	21
1917-1918	38
1919-1920	26
1921-1922	26
1923-1924	35
1925-1926	11

112 convicts are housed at Fulton at the time of writing this report. (February, 1926.)

Dr. Hamilton's survey recommends that more definite attention should be paid to the mental endowment of the convicts of the Missouri Penitentiary. By so doing it would be possible to remove those obviously requiring treatment to institutions designed for that purpose and moreover, in assigning work to the convicts, he recommends that more attention be given to their mental capacity to do certain kinds of work. He recommends further that prison physicians should be men of more adequate medical, surgical and psychiatric training and experience, or, if such prison physicians could not be secured, that arrangements be made for regular visits to the institution by physicians attached to the state hospital.

St. Louis City Jail.

In the investigation already mentioned of all the inmates of the city jail, approximately 200 individuals were studied although complete records were made of only 142. The ages of these persons ranged from 17 to 64 years. Approximately 65% were under 30 years. This age grouping is significant showing as it does the predominance of younger people among the prisoners in this institution. It was found that approximately two out of every three prisoners were unskilled, untrained persons who had no special equipment for any type of occupation. This too, is significant, illustrating as it does that the prisoners in general are untrained persons, not capable of competing in life with their fellows. The marital condition of the inmates indicated that more than 50% of the men were single while only one-third of the women were single. Two-thirds of the women were married, divorced, separated, or widowed.

The character of offenses for which these persons were held is shown in the following table:

Offense	Number
Attempt to kill	2
Murder	17
Larceny	18
Robbery	19
U. S. S. K.	22
Possession of narcotics	30
Rape	2
Burglary	14
Forgery	6
Concealed weapons	2
Sex charge	6
Violation Dyer Act	1
Usury	1
Bigamy	1
Arson	1
Total	142

Sixty-eight and one-half percent of these individuals were repeated offenders (recidivists). Many of them had been arrested from ten to seventy-five times. The survey of the city jail made a study of twenty-one of these repeated offenders and determined the following facts concerning the sentences which had been meted out to them by the courts:

> "Three of these twenty-one persons had received only one sentence each (one had been arrested 15 times, one had been arrested 25 times, and one 49 times); three persons received two sentences each (one of these had been arrested 10 times, one 14, and one 15 times); six had each received three sentences (3 had been arrested from 10 to 14 times,

one 20 times, one 25 times, and one 50 times); two individuals had received four sentences each (one of these had been arrested 10 times, and one 15 times); two individuals had received seven sentences each (one having been arrested 25 times, and one having been arrested 100 times); one individual had been sentenced nine times, and had been arrested 25 times; four individuals had never been sentenced, though they had each been fined repeatedly (one of these had been arrested 10 times, one 15 times, one 25 times, and one 50 times). The so-called legal severity of the offense, rather than the menace and serious burden of the individual to society, was the consideration in the majority of cases determining institutional care."

Sixty-eight percent of these prisoners were suffering from physical disease or defect or physical disorders of such a nature as to require medical treatment. It is perfectly clear that the absence of physical health makes it more difficult for individuals to adjust themselves to the conditions of normal living. To some degree the physical make-up of the individual is the foundation of his personality and greatly affects his mental health. The absence of normal physical conditions in this prison is indicated by the following table:

DISEASES AND OTHER PHYSICAL DEFECTS

	No.
Syphilis	45
Tonsils	5
Deviated Septum	7
Pes Planus	14
Drug Addiction	22
Bronchitis	3
Endocrine	1
Varicose Veins	2
Perforated Nasal Septum	6
Scabies	2
Gonorrhea	1
Asthma	2
Paralysis	1
Leukoderma	1
Catarrh	1
Neuro-syphilis	4
Perforated Soft Palate	1
Blind	1
Pregnant	1
Spinal Curvature	1
Varicocele	3
Hernia	4
Lung condition	1
Undernourished	6
Heart Condition	3
Amputation	3
No Physical	1
Stigmata	2
Deformity	1
None	44

Seventy-five percent of these prisoners in the workhouse were suffering from abnormal conditions which undoubtedly were important causative factors in their criminal careers. The following table indicates the character of these mental disorders and the distribution of the same among whites and negroes:

Mental Defects of Jail Prisoners

Diagnosis	Whites No.	Whites %	Negroes No.	Negroes %	Total	%
No abnormality noted	15	18.7	14	22.6	29	20.4
Subnormal	4	5.0	17	27.4	21	14.8
Feebleminded	2	2.5	10	16.1	12	8.5
Psychopathic Personality	47	58.8	18	29.1	65	45.8
Psychoneurosis	4	5.0	0	0.0	4	2.8
Epilepsy	0	0.0	1	1.6	1	0.7
Mental Disease	4	5.0	0	0.0	4	2.8
Unclassified	4	5.0	2	3.2	6	4.2
Total	80	100.0	62	100.0	142	100.0

St. Louis City Workhouse.

In the same survey 178 cases were examined at the city workhouse. Of these 99 were white and 79 negroes. 164 were males and 14 were females. Their ages varied from seventeen to seventy years. Here again the largest number were under thirty years of age, (65%). Here also a large proportion were untrained persons who had found it difficult to secure regular employment and thus to find economic adjustment.

Twenty-seven percent of these individuals had been married and prior to their arrest had been living together. Thirty-one percent had never been married and the rest were divorced, separated or widowed.

The offenses for which they were sentenced to the workhouse are indicated in the following table:

Offenses Committed

Offenses	Number
Larceny	65
Common Law	1
Forgery	19
Sodomy	2
Driving car without owner's consent	4
Robbery	4
Embezzlement	2
Carrying concealed weapons	9
Wife and child abandonment	2
Vagrancy	11
Keeper of house of ill fame	1
Assault (rape)	8
Fighting	3
Assault to kill	3
Destruction of property	2
Disturbing the peace	4
Burglary	17
Manslaughter	1
Alcoholism	8
Larceny from person	2
Attempted burglary	1
Bigamy	2
Failure to support wife	2
Child abandonment	1
Attempted robbery	2
Trespassing	1
Narcotic user	1
Total	178

Here, as in the case of the prisoners in the city jail, a large proportion (79%) were repeated offenders, many with a record of arrest running as high as one hundred. Here, as among the prisoners in the city jail, were found combined long criminal records with a large number of short-term sentences.

Sixty-nine percent of these 178 prisoners studied were found after thorough psychiatric examinations to have nervous and mental conditions which were in many cases important factors in their delinquency. A large percentage (37%) were "psychopathic personalities." The following table indicates the mental conditions of the individuals studied:

MENTAL DIAGNOSIS

Mental Diagnosis	Whites		Negroes		Total		Total
	Male	Female	Male	Female	Male	Female	
Nothing abnormal noted	23	1	29	—	52	1	53
Subnormal	7	—	20	1	27	1	28
Borderline mental defects	1	—	2	—	3	—	3
Feeble-minded	9	2	3	3	12	5	17
Psychopathic personality	41	5	18	2	59	7	66
Psychoneurosis	2	—	—	—	2	—	2
Mental disease	3	—	—	—	3	—	3
Endocrine epilepsy	—	—	1	—	1	—	1
Senile deterioration	3	—	—	—	3	—	3
Unclassified	2	—	—	—	2	—	2
Total	91	8	73	6	164	14	178

The intelligence rating of the inmates as determined by the Army Psychological tests is shown in the following table:

INTELLIGENCE RATING

Rating	Whites		Negroes		Total		Total
	Male	Female	Male	Female	Male	Female	
A	3	—	—	—	3	—	3
B	12	—	—	—	12	—	12
C+	18	—	1	—	19	—	19
C	28	5	19	—	47	5	52
C—	13	2	22	2	35	4	39
D	8	—	15	—	23	—	23
E	8	1	16	4	24	5	29
Unknown	1	—	—	—	1	—	1
Total	91	8	73	6	164	14	178

While this intelligence rating indicates that only 29% of the repeated offenders were of inferior intelligence, nevertheless seventy-nine percent indicate distinct personality difficulties. It should be noted in this connection that it is not so much intelligence which is at fault among those convicted of crime as it is the general mental make-up of the individual, his personality attributes, and his character traits.

Since the organization of the St. Louis Psychiatric Clinic which is situated in the Municipal Courts Building, there has been an increasing tendency on the part of the judges who preside over the adult criminal courts in the building, to refer cases to the Director of the Clinic, Dr. Nelson, for examination. Only cases where there is a suspicion of mental abnormality are referred. The table below is a summary of the diagnosis and a comment of Dr. Nelson concerning the cases referred to him for examination between May 1, 1923, and December 10, 1925:

Summary of Cases Examined by Dr. Nelson

	Cases Examined	Per cent
General paresis	11	8.4
Dementia praecox	9	7.0
Paranoid psychosis	12	9.2
Manic depressive insanity	1	.7
Epileptic insanity	4	3.1
Senile dementia	2	1.4
Unclassified	4	3.1
Feeble-minded with mental disease	10	7.7
Those suffering from psychopathic conditions not frank mental diseases (semi-responsible, semi-insane, etc.):		
Psychopathic personality	25	19.4
Feeble-minded and irresponsible having less than three-fourths the mentality of the average adult, or the feeble-mindedness being associated with actual psychopathic states (insane according to legal interpretation):		
Feeble-minded	18	14.0
Feeble-minded with psychopathic personality	9	8.5
Mental disease of feeble-mindedness associated with syphilis of central nervous system	5	3.7
Undiagnosed	12	9.3
Normal mentality	6	4.5
Total	128	100.0

Disposition

Psychopathic Institution Recommendations Made	Psychopathic Institution Accepted	Feeble-minded Institution Recommendations Made	Feeble-minded Institution Accepted
76	64	8	8

It will be seen from the foregoing tables that over 40 percent of the individuals examined were suffering from frank mental disease that comes within the meaning of the legal term insanity. Of those afflicted with feeble-mindedness, 14 percent had this condition alone; 8.5 percent had feeble-mindedness associated with psychopathic personality—the so-called feeble-minded delinquent as designated by some states; and 3.7 percent had feeble-mindedness or mental disease associated with syphilis of the central nervous system. In 9.2 percent the individuals were not under observation long enough to arrive at any conclusions, and in 4.5 percent they were found to be of normal mentality. In a little over 19 percent psychopathic personality was found and if we add to this the 9.2 percent not under observation long enough to arrive at definite conclusions, and the 4.5 percent found to be of normal mentality we have only one-third of the individuals referred for examination in which it could not be stated that they were suffering from mental abnormality to the degree of irresponsibility. No doubt some of those in this group would on further examination pass into one of the groups constituting frank mental abnormality.

The greatest number of psychopathic personality came from the city courts where misdemeanors alone are tried. Many of these individuals were arrested for vagrancy, begging, drunkenness, peace disturbances, etc., but upon a thorough examination some of them showed signs of maladjustment from early childhood. Sex perverts, inverts, drug habitues, chronic alcoholics, and other conditions indicating mental abnormality were found.

Since these courts have not the power to commit individuals to mental disease hospitals, it devolved upon the psychiatrist to plan some disposition where the judge of the court was willing to accept the opinion rendered him. It must be said to the credit of the judges in our city courts that they welcome advice from the psychiatrist and it has been possible through close co-operation and persuasive powers exerted upon the defendant in court to send him to the St. Louis City Sanitarium (for mental disease) where it is possible for him to receive intelligent care for his condition. Many individuals are repeaters in these courts for they do not remain free long after being brought into court and fined, and in lieu of their ability to pay a fine they are sent to the workhouse; but they are soon in court again after their release from the workhouse.

One man who was examined by Dr. Nelson had a record of 97 arrests. He has been in the workhouse 22 times and was on his way there again when we recommended more humane treatment for him. He was feeble-minded, was beginning to deteriorate mentally from age, and he presented a pathetic picture as he pleaded with the judge that he would not harm anyone, but desired to be left alone and not be molested by the law.

Juvenile Delinquency and Mental Disorder

Certain qualities are, in all nature, inherent to young life. Plants, animals and human beings are plastic and susceptible to moulding by environment during the early months and years. Even so there are, no doubt, many tendencies with which we struggle that we barely more than modify.

It seems clear to us that our most useful and productive work will be with children. The cure of character defects, always difficult, becomes increasingly difficult as age progresses. One may not "teach an old dog new tricks," and may have a serious time breaking him of tricks taught him in his youth.

The intensive study of children followed by the effort to make use of every factor or agency in the community—boy and girl scouts, big brothers and big sisters, play grounds, swimming pools, etc.—has brought about a substantial reduction of delinquency in neighborhoods and districts in St. Louis and many other places.

Some tendencies of the better sort in a child may never reach fruition for lack of opportunity, and it is true that the same can be said in fair measure of evil tendencies. An almost world-wide awakening to the needs of children, mental as well as physical, has come in recent years. The studies of Healy, Adler, Fernald and other leaders and the now rapidly accumulating data of the psychiatric clinics, have given us new insight and understanding of behavior deviations.

What happens in other fields of scientific endeavor is coming in the effort. We learn more of the basic facts in any matter of human interest and there emerge new solutions of puzzling tasks.

The Child Guidance Clinic.

There has been in St. Louis since May 1, 1923, in the hospital division of the Department of Public Welfare, a "Psychiatric" or Child Guidance Clinic. Nineteen hundred individuals have been examined by the personnel of the clinic, which comprises an internist, a psychiatrist, a psychologist, and specially trained social workers, all of whom take part in, and contribute in conference to, the solution of the conduct disorders presented. Four hundred and seventeen of the children were referred by the juvenile court. The problems are shown in the table below:

Theft	174
Running away	65
Truanting	75
Staying out late at night or all night	21
Refusing to work	16
Refusing to go to school	7
Lying	26
Pugnacious and quarrelsome	6
Profane and obscene language	10
Temper tantrums	6
Assault	3
Sex delinquencies—Sodomy, Fellatio, Exhibitionism, Rape, etc.	66
General incorrigibility	28
Destruction of property	6
Neglect in home	14
Advice as to placement	5
Physical defects	7
Miscellaneous	32

The figures show that more than one of the problems were presented by the same child.

The chronological ages of 381 of these 417 children is shown below and the mental ages follow.

CHRONOLOGICAL AGES

	Number	Percent
Under 4 years of age	1	.3
Under 5 years of age	4	1.0
Under 6 years of age	5	1.3
Under 7 years of age	2	.5
Under 8 years of age	13	3.4
Under 9 years of age	21	5.5
Under 10 years of age	26	6.7
Under 11 years of age	31	8.1
Under 12 years of age	42	10.9
Under 13 years of age	39	10.1
Under 14 years of age	52	13.5
Under 15 years of age	53	13.8
Under 16 years of age	40	12.4
Under 17 years of age	36	9.3
Under 18 years of age	9	2.3
Under 19 years of age	1	.3
Under 20 years of age	3	.7
Under 21 years of age	3	.7

The chronological ages were from five to twenty-one years and the mental ages were between one year and eighteen years.

Median intelligence quotient	77.4
The middle 50 per cent of the children examined had:	
Intelligence quotients between	65 and 89
36 percent had intelligence quotients below	70
18 percent had intelligence quotients between	70 and 80
90 percent had intelligence quotients below	100

It seems clear that these children and youths are below the general average of the community and over half of them incapable of competing on equal terms with average normal boys and girls.

PHYSICAL FINDINGS

	Percent
Poor physical constitution was present in	18.0
Poor vision	19.3
Heart disease	8.2
Excessively developed external genitals	2.1
Kidney disease	1.8
Syphilis	26.4
Enlarged lymphatic glands	25.8
Teeth decayed and neglected	52.3
Tonsils enlarged and diseased	31.2

Psychiatric Findings

	Percent
Mental disease	3.9
Speech difficulties	5.4
Epilepsy	3.8
Sexual inversion	1.8
Sexual perversion	1.4
Personality difficulties	39.8
Feeble-minded	36.8
Borderline between subnormality and feeble-mindedness	18.0
Subnormal	15.2

The tables show the nearly constant presence, in a very considerable percentage of those brought before the juvenile court, of physical or mental disease or defect, or both combined.

Judge Hartmann, the present judge of the juvenile court, under date of December 16, 1925, says: "I find such medical examination as the clinic gives indispensable in dealing with juvenile cases. . . . Recommendations of the clinic are followed. Heretofore, children who were mentally defective, along with those who might be normal, were committed to reformatories. Today, with the aid of the clinic, we are able to commit the mentally defective to institutions other than reformatories."

With all that medical science, aided by allied sciences, can suggest and with all that people interested can carry out, many flat failures will occur. But it must seem obvious that among children our most successful effort to reduce adult crime in later years will be made.

It must seem equally obvious that these youngsters are entitled to such help as we have in our power to give, to the end that their lives be not shadowed by crime and their citizen associates in adult life harrassed and jeopardized.

School Children in Missouri.

In 1921 at the invitation of Governor Gardner, the National Committee for Mental Hygiene made a survey among the school children in nine representative counties of Missouri, of the inmates of the Missouri Reformatory, of the Industrial Schools, of Bellefontaine Farms, and of several orphan homes. The purpose of this was to examine the extent and character of abnormality among the children of Missouri. Some of these findings are very interesting in connection with the important problem of determining in advance the types which are predisposed to criminal actions. The following table shows the number of school children examined in each locality where the survey was conducted and the numbers of these children who were diagnosed as mental defectives and those who were diagnosed as of borderline intelligence and the percentage which these two groups together constitute of the total examined in the community:

MENTAL DEFECTIVES BY COUNTIES AND CITIES

School	Total number of children	Mental defectives (intelligence)	Of borderline intelligence	Percentage defective in intelligence
Atchison County	451	11	10	4.7
Boone County	126	5	3	6.3
Camden County	333	23	23	15.8
Cape Girardeau	613	16	12	4.6
Carthage (2 schools)	356	8	4	3.4
Dunklin County	258	52	18	27.1
Richmond	701	14	17	4.4
Iron County	387	14	18	8.3
Springfield	1,073	13	13	2.4
Ash Grove	312	6	5	3.5
Nine rural schools, Greene County	374	11	11	5.9
Totals	4,984	173	134	6.4

The following table indicates the distribution of mental defectives and borderline defectives among the various institutions studied in Dr. Hamilton's and Dr. Haines' surveys:

MENTAL CONDITION OF INMATES OF VARIOUS INSTITUTIONS

Institution	Total examined	Mental defectives	Borderline defectives	Percentage defective
County Almshouses (Dr. Hamilton)	2,058	443	—	21.5
Three children's homes	408	16	22	9.3
Missouri Reformatory, white	409	38	31	16.9
Missouri Reformatory, colored	133	22	13	26.3
Industrial Home for Girls	235	19	17	15.3
Industrial Home for Colored Girls	87	9	13	25.3
Bellefontaine Farms, white (St. Louis)	129	7	13	15.5
Bellefontaine Farms, colored (St. Louis)	57	3	8	19.3
St. Louis Workhouse, white	91	3	2	5.5
St. Louis Workhouse, colored	54	9	6	27.8
Totals	3,661	569	125	19.0

Bellefontaine Farms.

One hundred and forty-nine children were examined at this institution. They were all boys, ranging in age from 9 to 17 years, inclusive.

Eighty-eight were white and 61 were negroes.

The offenses for which these children were sentenced are found in the following table:

OFFENSES

Offense	White	Negroes	No.
Incorrigibility	6	2	8
Runaway	14	20	34
Burglary	13	10	23
Destruction of property	2	—	2
Sex	2	1	3
Malicious mischievousness	1	1	2
Out late nights	1	—	1
Assault	1	—	1
Truancy	17	8	25
Larceny	29	17	46
Neglect	2	—	2
Robbery	—	1	1
Concealed weapons	—	1	1
Total	88	61	149

The psychological tests show that only 8.7 percent of the children at this institution were rated as having very low mentality. This table shows the intelligence rating according to race:

INTELLIGENCE RATING AND RACE

Mental Rating	Whites	Negroes	Total
Average	31	24	55
Low average	22	9	31
Subnormal	28	22	50
Borderline mental defect	4	4	8
Mental defect	3	2	5
Total	88	61	149

Some relation is found between intelligence and delinquent careers, for 41 percent of the repeated offenders at this institution were classified by the psychologists as either subnormal in intelligence, borderline defective, or mental defectives.

A thorough psychiatric examination of the children at this institution resulted in the following classifications:

MENTAL DIAGNOSIS AND RACE

Mental Diagnosis	Whites	Negroes	Total
Nothing abnormal noted	9	8	17
Subnormal	15	14	29
Borderline mental defect	7	5	12
Feeble-minded	4	1	5
Psychopathic personality	29	15	44
Psychoneurosis	2	1	3
Epilepsy	1	—	1
Endocrine	19	7	26
Congenital syphilis	2	10	12
Total	88	61	149

Approximately 86 percent showed psychiatric conditions that are essential to recognize in any constructive plan of training and adjusting these children.

The problems of feeble-mindedness, epilepsy, disorders of the ductless glands, congenital syphilis and psychopathic personality are probably the most fundamental questions to be considered in dealing with these children. It is important to stress that early recognition of these conditions, and suitable treatment and training, may save many a child from shipwreck in later life.

House of Detention and Juvenile Court.

Two hundred children were given physical, psychiatric and psychological examinations at the House of Detention. This work was done by Dr. Heldt, in connection with the daily service of the Psychiatric Clinic of the Juvenile Court.

Eighty-six of these were white boys, 43 white girls, 60 negro boys, and 11 negro girls. The ages varied from 8 to 18 years, inclusively.

Our object was to find out what proportion of the children passing through the House of Detention were in need of thorough and intensive study at the Psychiatric Clinic. The following table of mental diagnosis, showing the frequency of psychiatric conditions, has been made up from the daily survey conducted by Dr. Heldt:

MENTAL DIAGNOSIS

Nothing abnormal noted	23
Subnormal mentality	93
Feeble-minded	7
Epilepsy	1
Psychopathic personality	7
Psychoneurosis	3
With personality handicaps and character defects	66
Total	200

In only 23 cases were there not present mental conditions that are important to consider in the solution of the problems these children presented to the court.

In addition to the above studies an examination was made of 167 juvenile court cases.

One hundred and fifty-six of these children were white and 11 were negroes; 134 were boys and 33 were girls.

Their ages varied from 5 to 19 years, the largest number being between 8 and 12 years inclusive (66 percent). This indicates that the court has been using the Psychiatric Clinic largely in the cases of younger children—12 years or younger.

We are also glad to say that the court has been as solicitous in having first offenders examined as it has in desiring the clinic to undertake the study of recidivists. Eighty-four children had appeared in court for the first time, while 83 of the children were repeated offenders.

FREQUENCY OF OFFENSE

First offense	84
Second offense	27
Third or more offenses	56
Total	167

There is considerable school retardation in these children, the causes for this are many and varied; causes to be found within the child's own constitutional make-up, his home, the failure of the school to understand the needs of the child himself, and to adjust its educational tools to suit these needs, causes found in the child's heredity, his associates, etc.

We have here a group of children, the majority of whom have been a problem prior to their appearance in the juvenile court. Not only problems for the court officials, but for the school authorities, and, as our social investigations have shown for a period covering several years, problems to parents and relatives.

The following tables and discussions will endeavor to present a few of the conditions we found handicapping these children; intelligence inferiority and defect, personality difficulties, mental disease, epilepsy, psychoneurosis, serious physical diseases, and the like. It will be quite impossible to deal at all adequately with the immense amount of instructive social data in these cases, that has been gathered by Miss Scoville and her assistants. These social investigations point out very forcibly that conditions in the home—psychopathic parents, family desertion, employment of mother outside the home, lack of supervision and parental control, absence of intellectual, moral and religious training, etc.—are found in a striking percentage of cases.

The following table shows the relations between the chronological age and mental age, and gives some idea of the amount of intelligence retardation as determined by psychological tests:

Chronological Age and Mental Age

M. A.	6	7	8	9	10	11	12	13	14	15	16	17	18	19	Total
1	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
2	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
3	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
4	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
5	—	—	—	—	1	—	—	—	—	—	—	—	—	—	—
6	—	2	—	2	2	—	—	—	—	—	—	—	—	—	—
7	—	—	—	—	2	1	—	—	1	—	—	3	—	—	—
8	—	—	1	4	3	6	2	1	2	2	—	1	—	—	—
9	—	—	2	1	3	2	1	5	1	4	—	2	—	—	—
10	—	—	—	2	1	4	5	3	4	2	4	1	1	—	—
11	—	—	—	—	1	3	2	1	6	3	3	—	—	2	—
12	—	—	—	—	—	1	2	1	4	5	3	1	2	1	—
13	—	—	—	—	1	—	2	2	4	3	3	1	—	—	—
14	—	—	—	—	—	—	1	1	5	—	4	1	—	—	—
15	—	—	—	—	—	—	—	1	2	1	1	—	—	—	—
16	—	—	—	—	—	—	—	1	1	2	2	—	—	—	—
17	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
18	—	—	—	—	—	—	—	—	1	—	—	—	—	—	—
19	—	—	—	—	—	—	—	1	—	—	—	—	—	—	—
Undetermined.	—	—	—	—	—	—	—	—	—	1	—	—	—	—	—
Total	—	2	3	9	14	17	15	17	31	23	20	10	3	3	167

It can be seen from the above table that 31 children under 15 years of age show an intelligence retardation of four or more years.

The mental diagnosis, as shown in the records, cannot be summarized adequately by any artificial tabular method for statistical purposes. A classification is always of limited value, and when used it must be remembered that it does not cover all of the facts in the case. So the following table, giving some idea of the general mental findings as found among these children, by no means at all represents faithfully the immense amount of information gathered on their mental condition.

The table, however, will serve to show the frequency of mental disease, mental defect, and other mental handicaps that are necessary to recognize in proper court disposition of the cases of these children. Certainly any form of social treatment that fails to take them into account will fall short of success.

Mental Diagnosis

Diagnosis	White	Black	Male	Female	Total
Nothing abnormal noted	8	—	6	2	8
Subnormal	55	3	47	11	58
Borderline mental defect	6	—	4	2	6
Mental disease	3	—	2	1	3
Mental defect	10	2	9	3	12
Epilepsy	3	—	2	1	3
Psychoneurosis	20	4	19	5	24
Psychopathic personality	39	2	36	5	41
Endocrine	4	—	2	2	4
Neurosyphilis	1	—	—	1	1
Unclassified	7	—	7	—	7
Total	156	11	134	33	167

It can be seen from the above table that only eight children showed nothing abnormal in their mental make-up at the time of examination. In practically all of the children coming before the clinic we found conditions in their mental make-up that had much to do with their delinquent conduct. Approximately 11 percent of the children were either feeble-minded, or cases of borderline mental defect; 34.7 percent were found to be subnormal in mentality, but not feeble-minded; 1.8 percent showed actual mental disease; 24.5 percent were handicapped by a psychopathic personality, etc.

Conclusions

The evidence presented in this report indicates clearly that the State of Missouri must recognize the presence of elements in the causes of crime which can not be touched by mere punishment. A considerable number of those who commit crimes are mentally and sometimes physically in need of treatment rather than punishment. Moreover we have indicated that these unfortunates are often habitual offenders, and are being arrested and confined in penal institutions repeatedly. The most discouraging fact brought out in this survey is the great frequency of repeated offenders passing through the jail and workhouse. If more than two out of every three persons sentenced to our correctional institutions, and almost every other person passing through our police court, is a recidivist (a repeated offender), then we have failed to accomplish that which we set out to accomplish in these cases—the prevention of crime; nor have we protected society from them if they promptly return to the same criminal conduct they exhibited before their arrest.

What would we think of a hospital that returned to the community, after a fixed period of time, two-thirds of its cases in no better condition than they were the day they entered the hospital. This is no criticism of penal institutions, nor has it any sentiment in it. It is a plain matter of common sense and public welfare. It is a matter of criticism of our entire system of dealing with offenders.

It should further be noted that such defects should be discovered and studied prior to conviction. But we have nowhere in Missouri any organized medical aid for adult courts. Only the most obvious cases of mental defectiveness or disorder are examined medically. If the defense sets up the plea of insanity there results the usual disgraceful battle of the experts, when it should be a quiet, orderly proceeding carried out by disinterested examiners who should be as free from bias as the court itself.

Provision by a state agency for the discovery of the committable insane and defective would relieve the courts of many tedious trials often marked by disgraceful use of expert testimony. The psychiatric study of certain malefactors, who are neither feeble-minded nor insane from a legal viewpoint but who, it is quite clear, are of such psychopathic character as to be wholly uninfluenced by exemplary or punitive punishment may lead us to modify present methods of dealing with them which have been far from successful. It is desirable that we have equipment to make available what medical science has thus far proven it has to offer.

Concerning the question of what should constitute responsibility for crime, it is submitted that a report of mental soundness on the part of a regularly constituted state agency, such as the proposed Department for Mental Diseases, should guide us with fair safety.

The question as to the stage in the proceedings when such an examination should be made must from a medical viewpoint be answered—always before the trial begins. Where it is practicable a psychiatrist should be available to the courts for the purpose of sorting offenders and picking out those who are obviously psychotic for temporary commitment and observation in state hospitals. This service should gradually be extended and should surely be made available in all cases where the issue of mental soundness is raised.

The question of expert testimony in the defense of persons accused of murder and other felonies should not be asked of the medical profession alone. A lawyer must be "accessory before the fact," must plan the defense and abet, suggest, employ and pay the doctor before he can arrive on the witness stand. There are venal doctors, no doubt, but without venal lawyers they would be powerless. Both professions may very properly recognize their respective responsibilities in the effort to arrive at justice.

In summing up the obvious defects in our procedure for meeting the problem of mental disorder in its relation to crime, these things stand out:

1. Lack of provision for the identification of committable insane before the state has been put to the trouble and expense of trial.
2. There are now no adequate provisions of law to prevent the disgraceful spectacle often exhibited where a plea of insanity is made for the first time at the trial and supported by hired expert testimony, with no opportunity given for examination and observation by competent disinterested physicians, under the direction of the court, to get at the facts.
3. No opportunity is given the courts and penal institutions to recognize these "psychopathic personalities" who now constitute so large a proportion of habitual criminals, and there are

no adequate provisions of law for a prolonged incarceration of such persons. It has been already noted that the law does not yet permit this type of disorder to be offered as a defense and this is probably as it should be because they certainly should not be turned loose upon society.

4. There is no authority in law for the continued study of conduct disorders of children and the formulation of methods for their treatment in order, so far as possible, to cut off crime at its source.

Recommendations

1. There should be a State Department for Mental Diseases with the present State Hospital organization as a frame-work.

2. The services of the Department for Mental Diseases should be available to the criminal courts. This department should have opportunity to study cases within the hospitals, under temporary commitment by the court, which require investigation. The conclusions reached by the department should be submitted in writing to the court and made available to counsel for the prosecution and defense.

3. The State Department for Mental Diseases should assign staff officers of the State Hospitals to make examinations of the inmates of the penitentiary and correctional schools at such intervals as the service may require but not less often than twice each year.

4. In the larger cities the full time services of a physician highly skilled in the field of mental medicine should be furnished as an aid to the courts in sorting offenders.

5. There should be a new hospital prison for the criminal insane and defective, planned and equipped to meet the problems presented by its inmates.

6. A state-wide survey by the Department for Mental Diseases, in co-operation with the Department for Education, should be made of the children of the public schools for the purpose of making available the special school facilities already provided by statute, and discovering children who show marked conduct disorders.

7. The plea of insanity should be required to be set up in written pleadings before the trial and in such event the court should be given the power and it should be its duty to require the defendant to submit himself to an examination by the State Department for Mental Diseases. The defense of insanity should not be permitted at the trial unless thus pleaded.

PART XI

PARDONS, PAROLES AND COMMUTATIONS

By

A. F. KUHLMAN, M.A.
Department of Sociology, University of Missouri

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PARDONS, PAROLES AND COMMUTATIONS

SECTION I

THE PAROLE SYSTEM OF THE MISSOURI REFORMATORY

INTRODUCTION

The Missouri Reformatory (originally known as "The Missouri Training School for Boys") was established by an act of the General Assembly March 30th, 1887. It was located near Boonville, Missouri, and was opened to boys January 15, 1889.

The purpose of the institution, as set forth in the Laws of Missouri of 1887, was that it was to be "not simply a place of correction, but a reform school where the young offender of the law, separated from vicious associates, may receive careful physical, intellectual and moral training, be reformed and restored to the community with purposes and character fitting for a good citizen." This has remained in substance the legal purpose of the institution to date.[1]

In 1889 it was provided that the institution was also to be opened to boys who were homeless or surrounded by associations that were liable to lead them into vice. Under this provision many neglected and homeless boys were committed to the institution, especially from communities in which there were no special provisions for the proper care of neglected and dependent children.[2] In 1919, however, a law was passed prohibiting the commitment of neglected or dependent persons to the institution.[3]

The institution was originally known as "The Missouri Training School for Boys," but in 1915 the name was changed to "The Missouri Reformatory."[4] The fundamental purpose in making this change was to expand the institution so that it might have a department which would be an intermediate reformatory, to provide the proper training and treatment for the older offenders between eighteen and thirty. No appropriation, however, was made for this plan of expansion, hence it was never carried out.

Admissions were originally limited to boys between the ages of ten to sixteen years inclusive, convicted of misdemeanor or felony.[5] The age limit has, however, been gradually raised by means of commutations of penitentiary sentences to reformatory sentences. In

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[1] Laws Mo. 1887, Sec. 4, p. 279. See also R. S. Mo. 1919, Sec. 12424.

[2] R. S. Mo. 1889, Sec. 5739, Art. 5.

[3] Laws Mo. 1919, Sec. 26, p. 192.

[4] Laws Mo. 1915, Sec. 1524, p. 210.

[5] Laws Mo. 1887, Sec. 9, pp. 279, 280.

1895 it was provided that the governor have power to commute from the penitentiary to the reformatory the sentence of any boy under twenty-one years of age.[1] In 1915 courts having criminal jurisdiction were authorized to commute penitentiary sentences to the reformatory for persons between the ages of eighteen and thirty. The governor also was authorized to make similar commutations.[2]

Provision was made for conditional releases or parole as early as 1889. It was provided that the Board of Managers should have power to discharge for good conduct, but such release was upon the condition of continued good conduct.[3] The offender was released under the supervision of the authorities of the institution and if his conduct failed to be meritorious he could be returned to the institution. In 1895 it was provided that such a release for good conduct could be given only after the boy had been in the institution for a period of eighteen months.[4] This requirement of a minimum period of service in the institution remained effective until 1909, when it was repealed.[5] In substance the original legal provisions, however, of releasing offenders prior to the expiration of sentence is still effective, and releases can be given at the discretion of the superintendent subject to approval by the board.

The management of the institution was originally entrusted to a board of five commissioners appointed to serve for a period of four years.[6] In 1917 the management of the institution was placed with the State Prison Board and this board has had supervision since that date. In 1921 this board was succeeded by the Department of Penal Institutions.[7]

The cost of maintaining the reformatory is borne largely by the counties from which offenders are committed. It was provided in 1887 that counties pay a rate of $182.00 per annum for the support of every boy sent to the reformatory.[8] In 1889 this was reduced to $10.00 per month.[9] In 1919 it was again set at approximately the original cost, namely, $15.00 per month.[10]

PUBLIC INTEREST IN THE PAROLE SYSTEM

The parole system of the Missouri Reformatory was included in this state-wide survey of the administration of criminal justice after due consideration of its great importance. For some time the metropolitan newspapers of the State of Missouri, especially of the City of St. Louis, have been protesting against the methods employed in granting paroles at this institution. In this agitation the authorities of the institution were held responsible, primarily, for operating a system which seemed very inadequate. But the agitation was not limited to newspapers. Circuit judges and prosecuting attorneys here and there could not fail to observe that something was wrong.[1] The commission of new crimes by parolees, even though no statistics were available on this subject prior to this survey, attracted their attention. The fact that many criminals were being committed to the Missouri Penitentiary who had served previous terms at the Missouri Reformatory, could not remain undetected by these officials.[2]

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[1] Laws Mo. 1895, Sec. 6, p. 191.
[2] Laws Mo. 1915, Secs. 1529, 1530, pp. 211, 212.
[3] R. S. Mo. 1889, Sec. 5744.
[4] Laws Mo. 1895, Sec. 11, p. 192.
[5] Laws Mo. 1909, p. 599.
[6] Laws Mo. 1887, Sec. 7, p. 279.
[7] Laws Mo. 1917, p. 157. See also Laws 1921, p. 351.
[8] Laws Mo. 1887, p. 280.
[9] R. S. Mo. 1889, Sec. 5752.
[10] Laws Mo. 1919, p. 198.

Many revocations of paroles occurred. In 1923 there were 47 revocations in which individuals were returned to the reformatory for infraction of parole rules or commission of new crimes; in 1924, 63; in 1925, up to October 27, 54.[3]

A crisis was reached in regard to crimes committed by parolees from the Missouri Reformatory during the first half of 1925, in the City of St. Louis. An orgy of holdups occurred which precipitated two investigations, one by the police of St. Louis, and the other by a grand jury. The Chief of Police made an investigation of the records of all persons on parole in the City of St. Louis from the Missouri Reformatory. He carried his findings directly to the governor and to the prison board with the result that fifteen paroles were revoked in the City of St. Louis in August and September. Other parolees were committed to the penitentiary or to the reformatory on new sentences. The St. Louis City grand jury (June Term, 1925) in investigating the atrocious murder of a St. Louis policeman and a bystander during a holdup, reported that five of the seven participants were young men who had been sent to the Missouri Reformatory from St. Louis for grave offenses, and had, after serving only a portion of their sentences, been paroled. In the same report it was stated that thirty holdups, and other grave crimes, had been committed in St. Louis during the first half of 1925 by persons recently paroled from the Missouri Reformatory.

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[1] An inquiry was directed to the circuit judges of Missouri in regard to their experience with parolees from the Missouri Reformatory. Twenty-six out of forty-eight who answered the inquiry stated that the parole system of the reformatory was not working satisfactorily viewed from the standpoint of their experience as circuit judges. The two outstanding reasons mentioned for their conclusion were the high rate of crime among parolees from the reformatory and the inadequate supervision.

[2] From October 25, 1923, to October 25, 1925, there were 164. Of these 139 were parolees and 7 had escaped.

[3] This, of course, does not include any statement as to the total number of failures among parolees. Such a statement would include those who have absconded or who are defying authorities by failing to report, and also those who have been committed to correctional institutions of other states for new crimes.

Former Prison Board Admitted Faulty Methods.

That the parole system of the reformatory was not working well was known to the former prison board, which went out of office in 1925. This is indicated by the following correspondence of J. Kelly Pool, parole officer of the former prison board, with the superintendent of the reformatory:

> On November 30, 1923, after considering the application of Case I, age 20, convicted May 17, 1923, on a charge of first degree robbery, sentenced five years; having served fourteen months, the superintendent forwarded his parole papers and the papers of two other applicants for parole to the board for approval. Mr. Pool's answer was:
>
> > "Enclosed you will find the approval of three gunmen, two of whom have served twelve months and the other fourteen. I took these cases up with the board yesterday and after each member voiced his protest against the system whereby a first degree robbery man goes out in such a short time, approved the same because they did not know what else to do."
>
> On December 12, 1923, after considering the parole papers of Case II, age 20, convicted February 24, 1923, on a charge of robbery in the first degree, sentenced five years; having served nine months, Mr. Pool said in his letter to the superintendent, regarding the applications of Case II and another gunman:
>
> > "Both of these boys are highway robbery men, serving five years, and I notice that they are able to earn their merits in nine months. I thought we had a rule that highway robbers were to serve a greater portion of their sentences before earning their merits.
> >
> > "I wish you could read some of the letters we get from the circuit judges in St. Louis and Kansas City stating that the youthful highway robber is the most dangerous there is. They go out with a gun and have no sense whatever. I am sure we make a very serious mistake in letting them out so soon. Please let me hear from you about this."
>
> On the following day, the superintendent replied that there was such a rule, "but like all rules, exceptions are sometimes made." He argued that the boys under consideration were of a different type from those considered by the city judges; that they were country boys who were sent to the institution because they tried to recover money they had lost in a "crap game," and that the judges of St. Louis City are largely to blame for the situation under criticism because they overload the reformatory with highwaymen.

Again, on January 14, 1924, after considering the application of Case III, age 18, convicted February 8, 1923, on a charge of robbery in the first degree, sentenced five years; having served ten months at the time of application for parole, Mr. Pool wrote the superintendent:

> "What is your understanding in regard to the number of merits that a highwayman should earn before he is released. I thought we had some arrangement whereby boys charged with the more serious offenses should earn a greater number of merits. I am holding up this application until I hear from you. In this connection, I desire to call your attention to the fact that Howard Sidener, Circuit Attorney of St. Louis, made a visit to this office Saturday for the purpose of seeing the board and the governor in regard to this very question. He says that the merit system at Boonville makes an absolute farce and a joke of highwaymen. He agrees with the Kansas City judge who says that the dangerous class of criminals is now the young boys from 16 to 24, and he gave me the names of a number sent to the reformatory for serious offenses, who, in a very few months were released under the merit system, and who are steadily plying their game of crime every day in the week. He is going to forward you a list of these names. He wants to know if there cannot be some arrangement made by which a thoroughly hardened criminal may be made to serve a greater portion of his sentence when the judge, over his protest, sends him to the reformatory. As you know, I always have held that a highwayman should be made to earn a greater number of merits than merely a delinquent boy. If we are to stop the crime wave in the cities, we must make the punishment mean something to the boys. I know you are not responsible for the inauguration of the merit system. It was put in by Col. Blakey over my protest."

The present administration, recognizing that some change was necessary, limited the application of the merit parole system in the following respects: On February 1, 1925, it provided that offenders committed to the Missouri Reformatory by the circuit courts of the state, and boys committed on major felony charges by the juvenile court, are to serve seven-twelfths of their sentence, less a deduction of time for good behavior or deeds of honor and meritorious work. This provision will still prove to be an unsatisfactory solution of the problem because releases under it are absolute and final even though the individual may be unprepared to be at large.

The Problem of Responsibility.

Those who are familiar with conditions at the Missouri Reformatory in recent years are equally familiar with the conflicting views expressed in regard to responsibility for the failure of its parole system. Newspapers have placed it upon the authorities in charge of the institution. These authorities, however, have blamed the police in some instances because it is alleged that they have hounded boys on parole and have caused them to lose their jobs; in other instances the sponsor[1] is blamed for inadequate supervision; and in still other instances courts and judges are blamed because they have sent to the reformatory men well beyond their majority who were convicted of grave crimes, and who instead of being first offenders, were hardened all-around criminals.

When this survey was undertaken, no annual reports or body of facts existed showing the extent of failure among persons released from the Missouri Reformatory, nor was there any comprehensive factual statement by means of which the responsibility for such failures could be determined.

In view of this situation, this survey was decided upon as the best way to determine responsibility and to correct existing evils. All of the facts available concerning all persons, who were and who would have been on parole September 1, 1925, had they not violated their parole, were reviewed to determine just how the parole system at the reformatory has been working.

This study reveals that not one person nor the parole system itself, nor the officials who have administered it, can be held entirely responsible for the failures that have occurred among parolees from the reformatory. The causes are not singular, they are multiple; and many agencies must share in the responsibility for the perplexing situation that confronts the State of Missouri in connection with this institution.

THE PAROLE SYSTEM AT WORK

Eighty-five Percent of Releases are Paroles.

An analysis of Table I, showing the disposition of persons admitted to the reformatory in 1923, reveals that eighty-five percent of the offenders released, were paroled. The only other method by which many criminals obtain a permanent release is to escape, the table showing that of those committed in 1923, 5.18% escaped and were never apprehended. Escapes in that year were not an exception, the number in 1924 exceeding the number in 1923. Release after serving full time can virtually be ignored, because the number who serve full time is exceedingly small, constituting only 4.73% of the total dispositions, and two-thirds of those in this group had sentences of two years and less. The shortness of their sentence explains in part why they were not paroled.

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[1] A next friend and adviser who has agreed to aid and supervise the parolee who is paroled to his care.

Table I establishes the fact that virtually all releases from the institution are by means of parole. This would not be serious, from the standpoint of public welfare, if those paroled had served a reasonable portion of their sentences, and if in that time they had acquired an attitude and a character which would fit them for release under the conditions of parole long before their sentences have expired. The facts that follow prove that such, however, is not the case.

TABLE I

DISPOSITION OF CASES ADMITTED TO MISSOURI REFORMATORY IN 1923.

(AS OF OCTOBER 25, 1925)[1]

	Number	Percent
Still in confinement	16	3.61
Escaped (never recaptured)	23	5.18
Miscellaneous dispositions	7	1.58
Discharged	21	4.73
Paroled, making good	181	40.76
Paroled, reported to be in Army and Navy	6	1.35
Paroled, miscellaneous dispositions	4	.90
Paroled, committed new crimes or violated parole and returned to institutions	95	21.40
Paroled, disappeared or failed to report	91	20.49
	444	100.00

Mechanical and Arbitrary Abrogation of Sentences.

The merit system, instituted in 1918, has placed the discharge of prisoners, by means of parole, arbitrarily and mechanically on a time basis rather than upon a consideration of fitness for release—from the standpoint of conduct and character. There is no relationship between the length of sentence and the time served.

Table II discloses that the modal month (i. e. month in which the largest number were released) under the parole system, is the twelfth after their commitment.

The table brings out a number of illuminating but distressing facts. First, note that of the 228 offenders sentenced for a period of two years, 15.7% made their merit points and obtained a release eleven months after their confinement. In comparison with this, of the 268 confined on four year sentences, 19.4% were released eleven months after commitment. Of those receiving a sentence of five years, 20%, and of those receiving a sentence of six years, 20.9%,

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[1] Federal cases were excluded in this table because they receive no supervision after they are paroled, and the outcome of their parole cannot be determined. They have become eligible for parole, however, on the same basis as offenders committed by courts of the State of Missouri. The reason given for not supervising Federal parolees is that the Federal Government does not provide funds for such work and the parole officer already has more state parolees than he can supervise carefully.

TABLE II

Sentences Classified by Time Imposed and Number of Months Served[1]

Time Served Months	Total	Length of Sentence in Years											
		1	2	3	4	5	6	7	8	9	10 or More	Indeterminate	No Record
1	2		2										
2	1			1									
3	18		8	4	1	2	1	1				1	
4	25		13		6	6							
5	12		3		3	4		1				1	
6	18	1	4		5	5	1	1			1		
7	16		4	2	2	8							
8	21		2	1	5	9	2		1		1		
9	37		5	2	11	15		1	1		2		
10	85		29	10	15	22	2	1	3	1	1	1	
11	188		36	26	52	49	9	4	4	1	5	2	
12	214	1	62	28	47	50	8	6	4	1	3	4	
13	118		27	9	32	30	3	3	1	3	8	2	
14	92		17	2	31	19	10	6	3	1	3		
15	41		5	2	22	5	2	2	1	1	1		
16	29		7	3	7	3	1	2	2	1	3		
17	21		1	3	10	6					1		
18	17		2	1	7	3		2	1		1		
19	7			1	3	1		1	1				
20	7		1	1	2	1	1		1				
21	7			1	3	1		1	1				
22	3			1		1		1					
23	6				3	1	1				1		
24	2					1					1		
25	3				1		1		1				
26	1					1							
27	3					1	1					1	
28													
29	1						1						
30													
31	1									1			
32													
33	2										2		
34													
35	1									1			
38	1					1							
54	1										1		
68	1										1		
No Record	6							1				1	4
Total	1008	2	228	98	268	245	44	34	25	11	36	13	4

[1] For source of cases included in Table II see footnote to IV, p. 447.

In Table II sentences of ten years and more were grouped to simplify the table. Such sentences were minority sentences.

were released at the end of the eleventh month. These facts prove the futility of the merit system. They show that the merit system reverses and undoes the action of trial courts. It stands to reason that in most instances the judge or the court that sentenced the offender to the institution for a period of six years rather than two years had good reasons for doing so, and how can one justify the action of the authorities responsible for the operation of the parole system at the reformatory in undoing the work of the courts in this manner? Such a practice is contrary to the best methods in parole work.

It should further be pointed out *that the average length of sentence for which the 1,008 offenders were committed to the institution was 50.6 months. In contrast the average time served was only 11.5 months.* In other words, criminals served about one-fifth of their sentences in the institution and were released to serve the other four-fifths on parole. It is conceivable that under an intensive system of preparing inmates for parole sentences might be materially reduced by means of an efficient parole system, but under a merit system[1]

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[1] The merit system became effective January 1, 1918. It provided that the inmates of the institution be subject to parole upon receiving 2700 merit points. Boys whose conduct was acceptable received merits in the following order: Privates, 5 per day; Corporals, 6; Sergeants, 7; and Lieutenants, 8. Special additional merits could be granted by the Commanding Officer for deeds of honor or heroism.

On January 1, 1920, the merit system was modified to provide that only boys serving their first term were to be subject to parole upon gaining 2700 merit points. Boys serving a second term were required to gain 3300, and boys serving a third or subsequent term, 4500 merits. It was also provided that only boys serving their first term in the institution should be eligible to office.

Special provision was made for additional merits in case a boy's company had shown an unbroken good record for the period of a whole month.

Provision was also made for a scale according to which boys lost their merits for specific acts of misbehavior, as follows:

Escape	All merits	
Sodomy	All merits	
Insubordination	300 to 1000	demerits
Stealing	150	"
Lying	150	"
Impudence	150	"
Insolence	150	"
Disrespect	150	"
Quarreling	10	"
Swearing	150	"
Inattention	10	"
Disobedience	50	"
Disorder	10	"
Laziness	50 to 150	"
Discourtesy	10	"
Uncleanliness	20	"
Fighting	10	"
Vandalism	150	"
Carelessness	10	"

The merit paroles that are included in the tables in this report were presumably all granted under the provisions adopted January 1, 1920.

which has operated in an arbitrary and mechanical way, and under which criminals leave the institution *en masse,* such is not the case as is brought out by the facts in this report.

A tabulation of the length of sentences and the length of time served by offenders committed in 1914, 1919 and 1922, respectively, reveals that under the merit system the time served has been progressively cut down. The time served by persons committed in 1919 was, on the average, 14.5 months, and the modal month of release was the fourteenth. For commitments of 1922 the average time served was 13.3 months, and the modal month of release was the twelfth month. For commitments in 1923 and 1924, as we noted above, the average time served was only 11.5 months.

In contrast with this, in 1914 the average time served was 18.9 months, and the modal month of release was the eighteenth. These contrasts in the length of time served have occurred despite the fact that the average length of sentence was much shorter for the three years 1914, 1919 and 1922 than for the recent cases. In 1914 it was 43.6 months; in 1919, 44.1 months; in 1922, 39.6 months, and for the recent cases 50.6 months.

The Obvious Futility of the Merit System.

The records of parolees show that even feeble-minded boys were able to gain a merit parole in twelve months. Case IV, summarized below, is merely one of several illustrative cases of the point in question. The records of the Board of Education of Kansas City show that when this boy's chronological age was 14 years, 8 months, his mental age was 9 years, 6 months—and his intelligence quotient was 64. Another mental examination two years later at the McCune Home revealed the same intelligence quotient.

CASE IV.[1]

1-19-23	Convicted on a charge of delinquency.
	Sentenced to Missouri Reformatory 4 years.
	Under previous record of Kansas City Juvenile Court.
1-18-19	Arrested on complaint of———— Company for stealing from warehouse.
2-24-19	Brought into court by mother, made ward of the court and committed to McCune Home for 3 years.
6-26-19	Application for parole.
6-27-19	Paroled from McCune Home.
11-29-22	Arrested for disturbance of peace, age proven to be 16 years and sent to juvenile court.
12- 1-22	Committed to McCune Home for 1 year.
12- 4-22	Escaped from McCune Home.
1-12-23	Arrested for attempted theft of bicycle.
1-13-23	Brought into juvenile court by parole officer, returned to McCune Home.
1-18-23	Ran away from McCune Home twice since Jan. 12, 1923.
1-19-23	Committed to Missouri Reformatory for 4 years.
	Records there show "no previous criminal record."
1-16-24	Parole approved.

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[1] See page 560 for schedule employed in case studies of parolees.

Parole Record.

2-13-24	Not working. No reports for two following months.
5-20-24	Working outside of Kansas City.
6-11-24	Working with Kansas City Railroad Company.
7-16-24	Not working.
8-25-24	Sentenced to Missouri Penitentiary for two years on the charge of grand larceny.

Obviously, any merit or parole system under which a boy such as Case IV can make the required merit points in twelve months is indefensible. The requirements set by it are not sufficiently high to be a criterion of fitness for parole. In institutions where parole work is well organized, the feeble-minded are now considered unfit for parole. They should be committed to custodial care, certainly temporarily, if not permanently, for they cannot be expected to adjust themselves in a complicated world.

Case II, referred to above, as well as a study of the time served by other offenders convicted of serious crimes such as robbery in the first degree, show that they have often been able, in the past, to obtain a merit parole in nine months. Further, boys with long criminal careers have made the required number of merit points in an equally short time.

Case V is an illustration of this type of achievement. This boy was committed 5-25-23 to Missouri Reformatory on a charge of delinquency, and was sentenced for a period of four years. His age was sixteen. Of this sentence nine months were served, in which time the required number of merit points were earned. The reformatory records show "no previous criminal record." Yet the juvenile court records indicate that when the boy was only nine years old, he was found as a neglected child and was made a ward of the Court and committed to the McCune Home for two years. His record follows:

12- 2-16	Allowed to go home to attend mother's funeral and never returned to McCune Home.
12-29-16	Did not appear; order issued for appearance in juvenile court January 5th.
1-12-17	Brought into juvenile court by grandparents, continued one week to get witnesses.
1-20-17	Appeared in juvenile court with grandmother and returned to McCune Home.
8-12-18	Time expired at McCune Home. Cannot be released. Physician of the court recommends he be committed for another year.
8-16-18	Recommitted for one year.
11-26-18	Ran away from McCune Home.
6-27-19	Paroled from McCune Home.
7-26-22	Arrested as party to holdup of drug store, admits part.
7-28-22	Brought into juvenile court by grandparents. Continued one week.
8- 4-22	Appeared in juvenile court with grandmother. Committed to McCune Home for two years, unless satisfactory arrangements can be made for him to go to his uncle at Chanute.
8-11-22	Motion for rehearing overruled.
9- 7-22	Attempted to run away from McCune Home.
9- 8-22	Returned to McCune Home and provision was made that if he attempted to run away, he be sent to Missouri Reformatory.
3-28-23	Arrested with a loaded revolver on him.
3-30-23	Appeared in juvenile court with parole officer, committed to McCune Home for two years.
5-18-23	Arrested with ———————— for stealing Ford car.
5-25-23	Appeared with parole officer in juvenile court. Committed to Missouri Reformatory for four years.
3-18-24	Paroled.

Special Paroles Supplement Merit Paroles.

Extraordinary cases arise in which it should be possible to release certain individuals in less than the nine months minimum time required under the merit system. Provision has been made for such a release in the legislation of 1889.[1] Special paroles are granted upon the recommendation of the superintendent, subject to the approval of the Department of Penal Institutions and the trial judge. Such a provision, adequately safeguarded, conforms with the best practice in parole work elsewhere. Unfortunately, however, this provision for special paroles invites a great deal of pressure from sources outside of the institution which frequently leads to premature releases, if not actual abuse of the privilege to grant special paroles. In the absence of any field parole officers who can investigate and substantiate representations made to the superintendent and the prison board in regard to persons for whom special paroles are sought by outsiders, these representations are permitted to play too decisive a role, especially when they are made by persons who are prominent and influential. A few illustrative cases will suffice to show the seriousness of the problem thus presented.

CASE VI.

Case VI, age 21, convicted May 19, 1921, robbery first degree, sentenced five years, served seven months.

5-19-21	A state official, Mr. G——— writes to the superintendent of the reformatory that A's sister has worked for him and he is interested in the boy, and thinks he is a good boy but got mixed up with bad associates. The petition states that this is the boy's first offense, that he is needed at home and that if paroled to G——— he will secure honest and beneficial employment for him.
11- 7-21	The Governor of Missouri writes to the superintendent: "Mr. G——— seems to be interested in a Mr. A——— who is in your institution. I would be glad if you would let me have your opinion of A——— as to his merits."
11- 8-21	Superintendent writes to the governor: "I am not very favorable to special paroles but have a good deal of faith that one would not be misplaced in case of A———."
11- 9-21	The superintendent to Mr. G———: "It has been the rule of the prison board to require the recommendation of the trial judge and prosecuting attorney for special paroles, but if the governor wishes to put the case up to the prison board without such recommendations I would be glad to approve the application you have sent me."
11-22-21	Mr. G——— to the superintendent, quoting copy of letter from governor to Mr. Pool: "I am writing to say to you that if the board desires to parole A——— on his record, I will be perfectly willing to sign the papers, if there are any papers to come to me."
12-19-21	The superintendent to Mr. Pool: "Attached is application for parole of A——— which I have approved in pursuance with your request over the telephone. This matter I believe you wish to take up with the governor." No record appears in A———'s file concerning a Christmas furlough, but the following letter indicates that such a furlough was granted. There is also no evidence of A———'s return to the institution.
12-29-21	The superintendent to A———: "This is to advise you that the prison board has not yet taken definite action on your parole, but you may continue to remain at home on your Christmas furlough until further notice. I think the matter will be disposed of within a short time."
1-20-22	Parole approved.

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[1] R. S. Mo. 1889, Art. 5, Sec. 5744.

CASE VII.

Case VII, age 14, convicted Jan. 29, 1925, sentenced Missouri Reformatory for two years on charge of delinquency. After serving three months application was made for parole by an attorney from ——— County.

3-27-25 The superintendent wrote to the attorney saying: "It is a little unusual to parole so soon, but if the trial judge can be persuaded to recommend it, it will be given friendly consideration."

4-21-25 The superintendent acknowledges receipt of application for parole, and railroad fare and also receipt of recommendation of trial judge. Letters referred to from the attorney do not appear in the file.

5- 8-25 Boy was released.

5-29-25 Mother of boy writes parole officer saying that Mr. ———, the attorney who assisted her in obtaining a parole, is not treating her right; that she had given him $25.00 and had promised him $25.00 more when the boy came home. Now she is sick and cannot pay the $25.00 and Mr. ——— "does not like it." She further states that she fears he will cause her boy's parole to be revoked.

CASE VIII.

Case VIII, age 16, convicted March 22, 1921, on the charge of burglary and larceny, sentenced five years.

Four months after the boy had been received at the reformatory, an attempt was made to secure a special parole for him, on the ground that petitioner "believes that he has had a sufficient lesson and that he will now obey the laws of the State of Missouri and make a good citizen, and for the further reason that your petitioner believes that he can educate and control his said son and encourage him in right living more effectively than can be done in the reformatory, and that he will be of material assistance in procuring a living for the family."

The boy was released, and since his release, July 29, 1921, made only four reports, showing that he was at work for his father. Other reports that have come in show that the boy has gotten into trouble and the sponsor has not been able to control him. On May 19, 1925, the sponsor wrote that the boy's conduct has become intolerable and that he could no longer act as sponsor for him, the boy having been tried for bootlegging, and although he was obviously guilty, was acquitted. He was also tried for disturbing the peace and sentenced to ninety days in jail which he was serving at the time of the sponsor's writing.

CASE IX.

Convicted November 3, 1924, on the charge of burglary and larceny, sentenced two years, served four months.

Two months after the boy had been received at the reformatory, Mr.——— from ———County wrote to the superintendent of the reformatory about this boy and two others. Says he brought the boys down there and since he has returned, he has investigated these boys and has discovered it is their first offense. He assures the superintendent that there will be no criticism if this boy is paroled and recommends a parole for the boy. The records show that the boy was released May 8, 1925. But after the boy was released, he made only one report and disappeared. His sponsor has written that he does not know of the boy's whereabouts.

CASE X.

Convicted March 14, 1924, of delinquency, sentenced four years; after serving six months, pressure came for a special parole on the ground that the boy had learned his lesson and had been punished sufficiently. The superintendent's reply to the letter was that the trial judge's recommendation would be necessary for a special parole.

The records at the reformatory show that the boy was paroled October 21, 1924, in spite of the fact that he had been a ward of the juvenile court of Jackson County for four years prior to his commitment to the reformatory.

The following juvenile court record is sufficient evidence that the boy should not have been given a special parole:

11- 1-20 Arrested for stealing $8.90 from———filling station. Had most of the money on him when arrested. Confessed.

11- 5-20 Appeared in juvenile court with mother. Sentenced to the McCune Home for three years, with the provision that if he ran away he was to be sent to the reformatory.

6-10-21 Paroled from the McCune Home.

8-31-21 Arrested by the police when caught going through the pockets of a coat in an automobile at a golf club. Also stole $16.50 from the cash register at the ———— garage. Father made good the loss and they do not wish to prosecute.

9- 5-21 Appeared with parole officer. No order. To be held until we can get in touch with his father. Suspended and case continued to Friday before Christmas.

12-23-21 Made good, discharged.

10-17-23 Enlisted in Navy with mother's consent. After a few months he was given a dishonorable discharge as an undesirable. Mother cannot control him. Will not stay at home. Doctor said he was all right mentally and recommends that he be sent to boys' hotel.

10-21-23 Case settled out of court.

2-21-24 Arrested by police after he had forged his mother's name to a check for $15.00. Also had goods charged to mother without her knowledge. Also stole from a barber shop at ————. Mother is afraid of him as he tried to kill her. Also set fire to the house and tried to burn it down.

3-14-24 Brought into juvenile court by parole officer. Committed to Missouri Reformatory for four years.

These illustrations suffice to show what can and is being done by means of special paroles. The practice of granting such paroles still continues in spite of the recent so-called tightening up of the parole system.[1]

Responsibility for special paroles must be shared in part by trial officials and others who are prominent and influential because of their political position. Some trial officials frequently place the superintendent in an embarrassing position by promising offenders at the time of trial that if they make a good record for themselves at the institution they will recommend a parole after several months of service in the institution.

The records of the 1008 parolees included in Table IV, show that 93, or 9.2% of them, were "special paroles." The average sentence in case of these special paroles was 3.86 years, which stands in contrast with 5.7 months—the average time served in the institution prior to parole.

The reasons for granting 48 of these were not found in the files. The major reasons why the other 45 appear to have been granted, on the basis of data in the records, are given in Table III.

TABLE III

REASONS WHY 45 SPECIAL PAROLES APPEAR TO HAVE BEEN GRANTED

11	To help support family.
7	To leave the state (one did not leave as promised).
7	On recommendation by trial judge.
6	Cases show unusual political activity.
5	Recommended by trial judge and prosecuting attorney.
4	Ill health.
1	Recommended by prosecuting attorney.
1	To relieve crowded conditions at reformatory.
1	First offense, learned his lesson.
1	Services in preventing escapes.
1	Reformed.

The principal objection to this practice of granting special paroles is that prisoners who have influence are able to put pressure upon the paroling authorities. Such prisoners become interested in a premature release rather than in reform. Then too, the effect of special-paroles upon the whole administration of criminal justice tends to be a baneful one. A single case such as Case VI will tend to undo much that might have been achieved by courts and local institutions to establish in boys a feeling that there is justice in the administration of the criminal laws and that righteousness is the best policy. It should be added here that these offenders may not care much about what constitutes justice when they are planning to stage a holdup, but they have a very keen sense of what is justice as applied to them by the courts and institutions. The institution, the purpose of which is reformation[1] should, in the administration of paroles, always consider the effect of every parole upon the whole administration of criminal justice.

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[1] Reported in the papers February 1, 1925.

What Becomes of Parolees.

The real test of the effectiveness of the work of a reformatory and especially of the operation of its parole system, is in the last analysis the conduct and character of those who are released from the institution. They are its product. The percentage of parolees who succeed as useful citizens in the community is the real measuring rod of its efficiency.

TABLE IV

OUTCOME OF 1079 PAROLES[2]

	Number	Percent
Parolees making good	560	51.90
Disappeared, failed to report	262	24.28
Committed new crimes, returned to institution	233	21.60
In Army or Navy	15	1.39
Miscellaneous dispositions	9	.83
	1,079	100.00

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[1] See R. S. Mo. 1919, Sec. 12424.

[2] It was decided that the fairest and most accurate method of determining the success of the parole system would be to make first, a careful case study of what happened to all offenders who were committed to the institution in a given period of time. 1923 was selected as the most representative period for which records were fairly complete. The status (as of October 25, 1925) of offenders admitted in 1923 is given above in Table I. Second, a case analysis was attempted of all cases on parole on a given date, August 31, 1925. The status of these cases, as of October 25, 1925, is contained in Table IV. Since this second study included most of the cases in Table I and since the percentages of success and failure in the first study practically coincided with the percentages discovered in the second study, all of these cases were included in Table IV. There are included in Table IV 71 cases of offenders who would have still been on parole August 31, 1925, had they not violated their parole and been committed either to the reformatory or penitentiary for new crimes. Incompleteness of records made it impossible to obtain a complete statement of the status of all offenders who really should have been on parole August 31, 1925.

Federal prisoners are excluded in Table IV for the reason stated in the footnote to Table I. Practically all paroles granted in the two year period prior to August 31, Table IV contains some illuminating facts in regard to what becomes of offenders who pass through the Missouri Reformatory, and who are paroled under its merit system. It shows conclusively that some of the loose generalizations that have been made to the effect that "90% of the boys who pass through the Missouri Reformatory 'make good,'" are not based upon fact.

Table IV reveals that only 51.90% of 1079 parolees are making good; that 24.28% have disappeared or have failed to report, and must, therefore, be regarded as parole violators. Unquestionably, many of this group have been committed to the penal and reform institutions of other states for the commission of new crimes. But the group as a whole has broken away from the control of the institution on an average of 32.6 months before the expiration of their sentences. 21.60% have either been committed to the reformatory or to the penitentiary for the commission of new crimes, or have been returned to the reformatory for infraction of parole regulations. The fate of the 1.39% who are reported as having joined the Army or Navy is uncertain. There is evidence that many of them, because of their youthfulness, and in the light of the facts that we have obtained in our follow-up study, never enlisted, but have merely been released from their parole by reporting to the parole officer that they had done so. We have found that there is no documentary evidence at the reformatory verifying their entry into either branch of the service. In most instances the parolee's sponsor or a relative has reported that the parolee "intends to," or "has" joined the Army or Navy.

Among those whom we have classed as "making good," there are many who will still violate their paroles, because many have only been recently paroled and it is premature to judge whether their paroles will be a success. The average time the members of this group have been on parole is 11.07 months. This means that on the average their paroles will continue 28 months longer.

This study of the outcome of 1079 cases that must be regarded as representative cases of paroles, indicates, therefore, that at least

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1925, are included. In addition there are included cases paroled before August 31, 1923, whose parole had not expired August 31, 1925.

The study thus made was comprehensive, including a digest of all information contained in the commitment and institutional record of each case and of all correspondence pertaining to each case, as well as reports while on parole. Then these case cards were taken back to the community from which the individual had been committed to obtain the police and juvenile court records prior to commitment and after parole. This study was very successful in the large and medium sized cities but had to be abandoned in the smaller cities and rural areas because there were no records to turn to and parolees were scattered to such an extent that the cost of obtaining detailed information about them would have been prohibitive.

half of the boys who pass through the Missouri Reformatory and are released under the parole system represent failures.

Missouri Leads Other States in Parole Violations.

Table V shows the outcome of paroles of the leading reformatories of other states. In this group of states Missouri has the unenviable distinction of leading in percentages of violations.

TABLE V

COMPARISON OF PAROLE VIOLATIONS OF MISSOURI REFORMATORY WITH THOSE FROM OTHER LEADING REFORMATORIES[1]

State	Time Period	Number on Parole	Percent of Violations
Missouri		1,079	46.8
Indiana	1897-1924	10,338	25.5
New York	1924	482	19.7
Massachusetts	1923	414	19.3
Minnesota	6-1-1921 to 6-1-1925	466	16.5
Wisconsin	1898-1924	1,892	16.3
Illinois	1920-1922	1,210	14.1
Ohio	1924	984	13.6
Pennsylvania	1900-1924	7,269	10.2

It should be added that the percentage of failure entered in Table V for the Missouri Reformatory would upon a critical analysis prove to be a minimum. Closer supervision of parolees while on parole, and greater care in selection of material for parole in other states are of course the chief explanation of lower percentages of failure among those paroled.

This situation should cause every citizen who is interested in the public welfare of our state to be concerned. We should bear in mind that in this particular section of this survey we are dealing with facts concerning youth. We are dealing with boys and young men whose lives are still before them.

The question naturally arises as to why Missouri should have such a high rate of failure among the boys and young men who are paroled from her reformatory. This question will be answered in the following paragraphs.

SOME SIGNIFICANT PAROLE PROBLEMS

By way of introduction to the materials that are presented below it should be stated that a fair and sound appraisal of the value and efficiency of any parole system requires that attention be given to four major considerations: First, what is the nature of the raw material that comes into the institution? Are the offenders that are committed susceptible to reform influences so that they can be prepared in a comparatively short time for parole? Obviously their previous background and experiences in delinquency and crime, as well as the nature of the previous treatment given them because of their tendencies to crime, all have bearing upon their susceptibility to reform influences when they enter the reformatory. The factual materials submitted in this section on "Some Significant Parole Problems" sheds a considerable light on the nature of the material that goes into the Missouri Reformatory. The second important consideration is: To what extent are offenders effectively prepared for parole while in the institution? A quarter of a century of experience with parole work in states like Indiana, Wisconsin, New York and Massachusetts, has demonstrated conclusively that parole work cannot be detached from the institutional work which precedes it and of which it is a vital part. Unless the training and life of the institution prepares the offender for being released in a free community on his own resources on parole, the results of parole will be a disappointment. Third, the selection of those individuals who are ready and suitable for parole is just as important as the preparation for parole. Here again, experience has demonstrated that not all offenders are parolable. Sound methods must be employed to select those inmates who can be entrusted with the freedom that is implied in parole. No mechanical methods such as have been employed at the reformatory are adequate. In fact, the merit system as pointed out above has not provided a suitable method of selection, because under it practically all offenders, irrespective of their fitness, have become eligible for parole. The fourth important consideration is the nature of the supervision afforded by the parole system. Experience shows that invariably the percentage of successful paroles stands in direct ratio to the amount of aid, supervision and control parolees receive. As pointed out by facts cited below, no penal or correctional institution with a low percentage of supervision has ever attained a high percentage of men making good on parole.

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[1] Facts contained in this table were obtained by means of special inquiry.

The questions of adequacy of the preparation and selection of inmates of the reformatory for parole, as well as the nature of the supervision they receive while on parole, will be treated later under the general heading, "Administrative Weaknesses."[1]

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[1] The following "Rules and Regulations" have been adopted as governing the conduct of boys paroled:

The Department of Penal Institutions has the authority to revoke, cancel or annul the parole of any boy from the reformatory for any reason or reasons satisfactory to them and at their sole discretion until the expiration of his sentence. Should he fail to comply with one or more of the following rules and regulations, the parole officer of the reformatory is authorized to revoke, cancel or annul the parole of said boy, notifying the Commissioners immediately, of such action.

1. He shall work regularly or go to school regularly.
2. He shall report to the parole officer and to his sponsor or first friend each month,

TABLE VI

Paroles Classified According to Outcome of Paroles and Family Status[1]

	Father Only Living	Mother Only Living	Both Living	Neither Living	No Record	Total
Making good........................	67	118	320	54	1	560
Retd. to inst. or committed new crime..	25	37	74	23	3	162
Army and Navy....................	4	5	5	1	—	15
Disappeared, failed to report.........	40	58	130	26	8	262
Miscellaneous dispositions...........	1	—	3	1	4	9
Total.........................	137	218	532	105	16	1,008

Table VI shows that about half of the boys who are committed to the reformatory come from what may be considered defective homes, that is, either the father or mother, or both parents are dead. The facts disclosed in the table show that the parents of 57% of the boys classed as making good are both living. This percentage stands in contrast with 45.6% of the boys who have been recommitted for new crimes, and 49.6% of the boys who are classed as disappearing or failing to report. The merit system in rendering a boy subject to parole pays no attention to his parental conditions. Moreover, with the present under-staffed parole department no attention can be given to this condition of broken homes. Boys are released irrespective of the conditions to which they will return. The significance of defective homes is borne out in the case records of local juvenile courts in the majority of the cases for which fairly adequate records exist in Kansas City, St. Louis and St. Joseph. In the rural communities there are no records that could be used in this study.

Case XI is typical of the sort of material that the Missouri Reformatory has to deal with. The boy whose record is presented below has a brother whose record is equally bad. Probation officers,

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[1] The records of the institution do not enable us to treat the subject of parental conditions satisfactorily in that they merely show whether parents are living. Commitment records should be more complete. They should contain complete information regarding parental and home conditions. Certainly they should show divorce, desertion, separation, conflict and incompatibility between parents, etc.

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as instructed when paroled. (IN CASE OF FAILURE TO REPORT, a sworn statement of cause, signed by boy, sponsor and witnesses must be mailed to the parole officer within forty-eight hours after reporting date.)

3. He shall not change his place of residence or leave the State without first obtaining the written consent of the parole officer through his sponsor or first friend.
4. He shall conduct himself HONESTLY and must pursue the course of a law-abiding citizen in every respect.
5. He shall abstain from the use of all intoxicating liquors as a beverage.
6 He shall attend some church regularly.
7. He shall not live with or associate with any person or persons on parole from the Missouri Reformatory or on parole from any court or institution in this or any other State, nor shall he live with or associate with any person or persons with a criminal record, such as well-known police characters, ex-convicts, etc.

as well as the former psychologist at the McCune Home, say that the major cause of the boys' delinquency is neglect. Both boys made an excellent showing in a mental examination.

CASE XI.

4-21-22	Convicted on charge of delinquency, age 18. Sentenced to Missouri Reformatory for 5 years, served 14 months.
	Under previous record of Juvenile Court of Kansas City.
6-20-18	Mother and sister work and the boys run wild. They cannot control them; want boys sent to McCune Home.
6-27-18	Brought into court by mother and made ward of the court; committed to McCune Home for 6 months, case to be taken up again at that time.
1- 9-19	Case XI and brother——— implicated with two other boys in the robbery of a music store and the stealing of a violin.
1-10-19	Case XI in court with mother. Mother to pay $1.00 a week on damage to violin.
1-30-19	Sent to Detention Home by principal of school for circulating obscene notes among the girls at school.
1-31-19	Again in court with mother, committed to McCune Home for 3 years.
10-14-20	Arrested with——— for stealing a Buick car. Three other boys participated in the stealing but they escaped.
10-15-20	Committed to McCune Home for 3 years.
11-17-20	Ran away from McCune Home; parents ordered into court.
11-19-20	Boy appeared with mother and was sentenced to return to McCune Home.
7-22-21	Paroled from McCune Home to mother.
9-15-21	Arrested for having stolen bicycle in his possession; claims he was watching it for another boy; arrested about a month ago for shooting pins at women.
9-19-21	Committed to McCune Home for two years.
4-13-22	Boy admitted in a signed statement that he poured some tablets labeled "Bichloride of Mercury" "(Poison)" into milk containers at McCune Home, resulting in two other boys being sent to hospital poisoned.
4-21-22	Committed to Missouri Reformatory for 5 years. Juvenile court records do not show parole, but it occurred before July 10, 1923.
7-10-23	This boy and another were caught stripping a Ford.
7-13-23	Found guilty of grand larceny. Recommends that his parole be revoked from Missouri Reformatory. Boy returned.
9-18-24	Re-paroled.
8-12-25	Committed to Missouri Penitentiary, 2 years, charge grand larceny.

Boys from such defective homes who have never had the equivalent of a home do not have a foundation for wholesome living. It is futile to expect that the Missouri Reformatory should in the span of eleven or twelve months, with its present resources: 1. Re-train these boys so that they will have an earning capacity to make an honest living; 2. Develop a moral conception of what is right and wrong so that they can assume their duties as useful citizens. If the institution were properly organized and equipped to prepare offenders for parole (we shall show later that it is not so equipped) and if these boys were retained in the institution until their attitude toward life had been changed and until they had been adequately trained so that they could make an honest living, the institution would then serve the purpose for which it was originally established.

Many Inmates Are Repeaters.

Experience in paroling prisoners who are repeaters from correctional institutions has demonstrated that if they are to succeed they must be prepared for parole more carefully than first offenders, and they must also receive closer supervision while on parole. An examination of the commitment as well as the institutional records of over one thousand cases indicates that almost invariably these records treat these offenders as though they had "no previous criminal record." Very few of them are really first offenders. The majority are repeaters who have passed through the various safeguards and attempts of probation and moral suasion of the local juvenile courts and local institutional work for delinquents. They, therefore, represent failure in spite of all the preventive and correctional work that has been put forth in their behalf in local communities by the juvenile courts, social agencies and in many instances, the public schools.

The universal reaction in regard to commitment to the Missouri Reformatory that was encountered in talking with probation officers and judges of the larger cities and in some of the smaller cities, indicates that with few exceptions judges of the juvenile court do not commit a boy to the Missouri Reformatory except as a last resort. When all local resources have been exhausted, the boy is committed. Yet, we are face to face with this inexplicable fact, that most of these judges and their courts prepare a commitment record of these offenders that indicates that they are first offenders, when as a matter of fact they have a long career of delinquency behind them. Instead of showing "no previous criminal record," their commitment papers should contain a summary of their record of delinquency and crimes and their attitude and response toward the probation or local institutional work that was carried on in their behalf. It is to this defect in the commitment records that we must attribute at least in part, many premature releases from the reformatory under the merit system.

Table VII gives a summary of the previous criminal record of cases drawn from Kansas City, St. Louis, St. Joseph and Joplin. In these communities, it was possible to find records which were an index to the previous career of delinquency of many of these boys.

A tabulation by months of the length of time the parolees had been under the supervision of the local juvenile court in Kansas City and Saint Louis prior to their commitment to the reformatory, showed that the median average of time was 23 months in Kansas City and 51 months in St. Louis.[1] These facts show that many of these boys had been under the supervision of the juvenile court for five and six years and in many instances had been committed to local industrial schools for delinquency two or three times, and that in spite of this

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[1] The tabulation of Kansas City cases is based upon 147 paroles and 176 cases from St. Louis were included in the average given.

TABLE VII

Parolees Classified According to Outcome of Parole and Previous Criminal Records

	Making Good	Rtd. to Inst. or Committed New Crimes	Disappeared or Failed to Report	Total
Previous term in reformatory only	26	9	25	60
Previous term in reformatory, police and juv. court	6	4	6	16
Previous term in reformatory, police, juv. ct., McCune Home	8	—	6	14
Previous term in reformatory, police, juv. ct., Bellef. Home	4	1	2	7
Sub-total all previous term cases	44	14	39	97
Police, juv. ct., McCune Home	26	6	12	44
Police, juv. ct., Bellef. Farms	20	7	11	38
Police, juv. ct.	105	18	25	148
Police only	23	7	2	32
	218	52	89	359

record of delinquency the commitment record and their institutional record showed that they had "no previous criminal record." As a result they were required to make only 2700 merit points to gain their release. If the records had been accurate, second offenders would have been compelled to gain 3300 merit points, and those with three or more previous commitments 4500 merit points.

Cases IV and V, a summary of whose records was given above, were both committed as having "no previous criminal record." Many other cases having an equally long criminal record previous to commitment, might be introduced here for the purpose of illustration, but one additional case will suffice.

CASE XII.

12- 4-23 Convicted on a charge of delinquency, sentenced for 2 years, served 11 months.

Previous Juvenile Court Record in St. Louis City.

8-20-19 Charged with burglary and larceny.
9- 2-19 In juvenile court and sentenced to industrial school for 180 days and paroled.
10-21-19 Charged with petit larceny.
11- 5-19 In juvenile court, parole continued.
10-10-23 Charged with burglary.
10-17-23 In juvenile court, placed on probation.
10-23-23 Charged with burglary and larceny.
11- 4-23 In juvenile court and placed on probation.
11-26-23 Charged with grand larceny.
12- 4-23 In juvenile court and committed to Missouri Reformatory for 2 years.
6-10-25 Charged with carrying concealed weapons and grand larceny.
6-19-25 In juvenile court and committed to Missouri Reformatory.
9-23-25 In jail, charged with burglary and larceny, found guilty and recommitted to the reformatory.

Parole Record.

12-17-24 to 4-22-25 Employed at——— Glass Co. Shortly thereafter went to Kansas City and was returned to St. Louis; in jail charged with burglary and larceny.

The Responsibility of Local Agencies for Parole Failure.

The failure of parolees cannot justly be attributed entirely to the influence, or the lack of influence, of the reformatory itself. Many local influences have played their part.

In the first place, many of these boys made their first appearance in juvenile courts because of misbehavior in the public schools. If there had been a visiting teacher who could have given them individual attention frequently, their irregularity could have been corrected, as has been conclusively demonstrated in more than twenty cities that have employed visiting teachers. It may seem to be a long way from a boy's failure as a parolee of the reformatory to his misbehavior as a school child, but no plan for preventing failures among parolees will ultimately succeed with some of them unless we go back to the misbehavior of school children and treat it intelligently.

In many instances, the central fact in the mal-adjustment of these boys is their association with boys who have attended local industrial schools. This is especially true in Kansas City. One of the school attendance officers in Kansas City who has been in that work for a great many years explained that many truant boys defy all attempts on the part of the public school authorities to keep them in school. If threatened by attendance officers with commitment to the McCune Home[1] the truants point out the ease with which escape is constantly effected. Table VIII substantiates the observation of these truant boys.

TABLE VIII

Escapes from McCune Home, Jackson County

Year	Number of Escapes	Number Returned	Number Having Escaped Before
1922	38	19	10
1923	52	28	11
1924	54	22	16
1925 (to Oct. 1)	72	26	21

In 1922 *one* escaped for the *sixth* time, *one* for the *fifth, three* for the *third*, and *five* for the *second* time.

In 1923 *two* escaped for the *ninth* time, *one* for the *fifth, two* for the *fourth, four* for the *third*, and *six* for the *second* time.

In 1924 *one* escaped for the *fifth, one* for the *fourth, five* for the *third*, and *nine* for the *second* time.

In 1925 *one* escaped for the *eleventh, one* for the *seventh, two* for the *fifth, two* for the *fourth, four* for the *third*, and *twelve* for the *second* time.

It is clear that these boys as a result of their successful efforts to escape law enforcement agencies acquire habits and attitudes that can never be corrected.

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[1] McCune Home is a public institution provided in Jackson County for the care of neglected and dependent children committed to its care by the juvenile court of Jackson County and Kansas City.

Another fact amply borne out by the records of the juvenile court of Kansas City, is that many of these boys were first brought into court because of neglect. Apparently such cases have been referred to the juvenile court, and the method of that court has been to "institutionalize" many such children. The history of organized efforts in dealing with neglected and orphaned children during the past fifty years has demonstrated conclusively that child-placing activities as a result of which such children are placed in good private homes either temporarily or permanently, is the best way to provide for the adjustment of such cases.

The sad fact in connection with nearly every one of these cases is that they started out by entering the juvenile court as neglected children, often at the tender age of six or seven, were made wards of the court and were sent to the McCune Home, which houses both neglected and delinquent children, many of whom are "repeaters" who have been confined for serious charges. Gradually many of these neglected boys have made their transition from neglect to delinquency, and finally they have ended up in the reformatory or the penitentiary. Case XIII is typical of a great many cases recorded by the juvenile court of Kansas City.

CASE XIII.

9-23-21 Convicted on charge of delinquency (second commitment) age 12. Sentenced to Missouri Reformatory for 4 years, served 14 months.

Under Previous Juvenile Court Record.

3- 1-09 First reported in March, 1909, for being neglected. Home in very bad condition, living in filth, vulgarity and profanity. The mother seems to uphold the father in his idleness and trifling ways.

3-11-09 Place was investigated and it thought unwise to take the children away from the mother. They say they are planning to move to a better neighborhood.

7- 1-10 Complaint about the family from a neighbor. The father does not work; they use vulgar language before the children; ordered to court. Father disobeyed the summons and was in jail over Sunday.

8- 5-10 Children made wards as neglected and committed to Mrs. ————. She let them go home. Family up again for neglect. Father in Work House.

10-14-10 Mr.———— and ———— committed to———— Home; ———— and ———— let go home with mother and grandmother.

7-10-16 With the baby to institutional church.

10- 4-17 Has been permitted to go home with father but the neighbors have objected, so that he is again brought into court.

4-19-18 Appeared with parole officer, committed to McCune for 3 years.

9-22-21 Tried to escape from McCune Home.

9-24-21 Committed to Missouri Reformatory for 4 years.

10-30-22 Arrested with———— and————. They admitted that they were planning to break into some stores around which they had been loitering. All three are on parole from Missouri Reformatory.

11- 3-22 Appeared with father. Continued to December 23rd. To report and attend school.

12-22-22 To continue to report until June.

1-11-23 Has not reported, going to school, given another chance.

4-11-23 Causing much trouble in school, disorderly at school and on street car, truant, parole officer and attendance officer have worked very hard to build up the boy's morale. Pitifully neglected.

4-13-23 Failed to appear.

9-12-23 He will not obey court orders. Locked up at detention home.

9-14-23 Appeared with father, recommended that he be sent to Missouri Reformatory.

9-15-23 Parole officer revoked parole returning him to reformatory.

Each of this boy's three brothers has a very long police record. It seems that the basic causes were the home conditions, the attitude and habits of the father and mother.

In the two large cities of Missouri the probation departments of the juvenile courts are so badly undermanned that it is impossible for these courts to do satisfactory work. The report of the United States Children's Bureau on "Juvenile Courts at Work," shows that while the average number of cases in nine of the largest cities in the United States under the supervision of one probation officer is 85, it is 156 in St. Louis.[1] A single officer in Kansas City who has supervision of most of the probationers is responsible for more than 200 cases. The enlargement of the staffs in both cities seems to be imperative.

Drug Addicts Committed by Federal Authorities.

The records of the reformatory indicate that in 1923 one out of every six persons committed came from Federal Courts. In 1924, 142 out of a total of 588 committed were Federal prisoners. The presence of these prisoners has constituted a serious problem from the standpoint of young offenders who are sent to the institution. A study of the charges on which the Federal Courts have committed these offenders indicates that more than thirty percent of them were committed because of violation of the Drug Act. In other words, they were engaged in the drug traffic or were addicted to drugs themselves. It is no wonder that criminal lawyers in St. Louis and Kansas City have connected drugs with crime. It has been a scandalous thing to throw such a large number of prisoners who have been identified with the drug traffic into intimate association with boys who are in the formative period of life. Those already addicted to the use of drugs should have been committed to a hospital for medical care, rather than to the reformatory. Fortunately, the Department of Penal Institutions passed an order in 1925 that because of overcrowding, Federal prisoners should not be received at the reformatory in the future.

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[1] Pub. 141, p. 171.

Commutation of Penitentiary Sentences.

More than one out of five (21.7%) of the parolees in this study were at the time of commitment, commuted from the penitentiary to the Missouri Reformatory. The presence of these older offenders plays no small part in the failure of the institution in serving its purpose. The law of Missouri at the present time permits courts handling criminal cases to commute first offenders between the ages of seventeen and thirty.[1] This authorization is frequently used in certain communities, especially in St. Louis City to an excessive degree.[2]

Table IX summarizes the facts concerning 80 commutations granted by the courts of the City of St. Louis. It reveals a practice that is indefensible. 57.5% of persons receiving commutations of penitentiary to reformatory sentences were convicted of robbery in the first degree. While the modal average length of sentence is five years for all St. Louis commutations, the modal average of time served is eleven months. 90% of the whole group were paroled on or before the end of the thirteenth month after conviction.

This table substantiates Superintendent Harrison's statement[3] that the judges of the criminal courts of St. Louis overload the reformatory with men charged with robbery in the first degree. The table also sheds light on the reasons for an orgy of holdups staged in the City of St. Louis early in 1925 by reformatory parolees. In the last analysis the judges of the criminal courts of the City of St. Louis and of counties that commute too freely will have to bear much of the responsibility for this situation.

TABLE IX-A

Inmates from St. Louis City Whose Penitentiary Sentences were Commuted to Reformatory Sentences Classified by Offense for Which Convicted

Charges	Number
Robbery 1st deg.	46
Att. robbery 1st deg.	1
Robbery	4
Burglary and larceny	8
Burg. 2nd deg.	3
Grand larceny	5
Larceny	2
Larceny from person	1
Larceny of motor	3
Forgery	2
Larceny from dwelling	2
Rape	3
Total	80

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[1] See history of legislation providing for such commutations, p. 434.

[2] See Table IXB.

[3] See the correspondence of Case II, p. 436.

TABLE IX-B

Inmates from St. Louis City Whose Penitentiary Sentences were Commuted to Reformatory Sentences Classified by Length of Original Sentence and Months Served

Time Served Months	Length of Sentence in Years						
	2 Yrs.	3 Yrs.	4 Yrs.	5 Yrs.	8 Yrs.	10 Yrs.	Total
5	1			2			3
6	1						1
7	1						1
8				1			1
9	1			3			4
10				8		1	9
11	7	1	2	12		1	23
12	1			11	2	1	15
13	4			8		1	13
14	2			2			4
15	1			3			4
16							
17				1			1
No Record				1			1
Total......	19	1	2	52	2	4	80

NOTE: 2 were transferred to penitentiary after serving 5 and 6 months, respectively, at reformatory.

Tables X-A and X-B contain a tabulation of charges, length of sentences and length of time served by 168 offenders receiving commutations in the entire state. These cases were found among the 1008 cases studied intensively in this survey.

TABLE X-A

Commutation Cases for Entire State Classified by Offense for Which Convicted

Charges	Number
Robbery 1st deg.	52
Robbery	5
Att. robbery 1st deg.	1
Grand larceny	27
Forgery	13
Rape	4
Assault to rape	1
Att. to rape	1
Burg. 1st and larceny	1
Burg. and larc.	21
Burg. 2nd and larc.	2
Burglary	6
Burg. 2nd deg.	6
Larceny	6
Larc. from dwelling	2
Larc. of motor	3
Larc. from person	1
Stealing chickens at night	1
Stealing	3
Receiving stolen property	2

TABLE X-A (*Continued*)

Charges	Number
C. C. weapons	2
Kidnapping	2
Felonious assault	1
Forgery and jail breaking	1
Erasing ident. marks on auto	1
No record	3
Total	168

TABLE X-B

COMMUTATION CASES FOR ENTIRE STATE CLASSIFIED BY LENGTH OF SENTENCE IMPOSED ORIGINALLY, AND BY TIME ACTUALLY SERVED

Time Served Months	Length of Sentence in Years									
	2	2½	3	4	5	6	7	8	10	Total
1	1									1
2										
3	1		3							4
4	2									2
5	2			2	2					6
6	2									2
7	1									1
8					1					1
9	2			4	3					9
10	3		1	1	9				1	15
11	14	2	3	3	16			1	2	41
12	2		6	2	16			3	1	30
13	9		1	3	11				1	25
14	6		1	1	2					10
15	2			2	4					8
16	1					1				2
17				1						1
18	2									2
19			1		1		1			3
20										
21	1									1
22										
23										
24				1						1
No Record			1	1	1					3
Total	51	2	17	21	66	1	1	4	5	168

NOTE: 2 were retransferred to pen. after serving 5 and 6 months respectively. 1 died after serving 9 months. 3 escaped and were never recaptured.

Table X-A shows that exactly two-thirds of the 168 who received commutations had been convicted on one of four serious charges: there having been 52 convictions of robbery in the first degree, 27 of grand larceny, 21 of burglary and larceny, and 3 of forgery. The modal average length of sentence imposed, treating all commutations as a unit, was five years. In contrast, the modal average length of time served was eleven months.

Table XI indicates the distribution of commutations among counties and the total number committed from each.

TABLE XI

Parolees Classified by Counties According to Original Commitments and Commutations from Penitentiary to Reformatory

County	Number Commuted	Total Number Committed
St. L. City	80	255
St. L. County	5	22
Jackson	1	171
Adair	2	8
Audrain	1	2
Boone	5	21
Barry	2	9
Butler	2	13
Callaway	1	3
Cape Girardeau	2	17
Carroll	1	4
Cass	2	1
Chariton	2	3
Clay	1	5
Cooper	2	8
Daviess	3	7
Dent	1	1
Douglas	1	4
Franklin	2	2
Howell	3	7
Jasper	7	64
Lafayette	2	5
Livingston	3	9
Mississippi	1	2
Montgomery	2	2
Newton	2	15
Marion	1	7
Oregon	1	4
Pemiscot	1	4
Pettis	1	18
Ray	1	2
Randolph	1	8
Reynolds	3	3
Saline	1	2
St. Charles	1	10
St. Francois	1	10
Scott	2	8
Stoddard	5	4
Sullivan	3	3
Taney	1	1
Texas	1	2
Vernon	2	21
Webster	2	2
Wright	3	4
No Record	1	
	168	773

The net result of this practice is that the reformatory is not able to carry out the purpose for which it was established. The institution was originally established and equipped for boys in their early or middle teens and was intended to serve as a home and school for minor delinquents. From the standpoint of administrative organization and equipment, it is not at all adapted to inmates of older years, many of whom are confined because of serious crimes.

Further, as a consequence of this practice of commuting penitentiary sentences of young men between the ages of seventeen and thirty, many gangsters who are well beyond their majority, convicted of serious offenses, and who because of their long career of delinquency are hardened criminals, are thrown into intimate association with boys in the formative period of life who know very little of crime.

The presence of these older offenders in the reformatory means that we are lumping two problems. On the one hand, the young boys between the ages of seven and seventeen, inclusive, are primarily in need of a wholesome home and of education. On the other hand, the older criminals are in need of vigorous industrial training and consistent work.

The merit system as applied to these offenders whose sentences have been commuted in the past is bound to be a failure. In fact, it is safe to say that in many instances the commutation was secured simply because the criminal and his attorney knew that if a commitment to the reformatory could be obtained, the actual length of imprisonment would not exceed twelve months, irrespective of the length of sentence that might be given by the court or jury.

The present Department of Penal Institutions deserves credit for making commuted offenders subject to the seven-twelfths rule, less additional time for meritorious conduct. The action taken, however, is not sufficient. Commuted offenders should not receive outright and final releases, but should become eligible for a hearing for parole upon serving seven-twelfths of their sentence.

If the present law authorizing commutations is retained, it should be modified so that the Department of Penal Institutions will have authority to transfer offenders to the penitentiary who after being commuted to the reformatory prove to be desperate and vicious criminals. In like manner they should have authority to transfer to the penitentiary offenders of this group who violate their paroles.

Outsiders Must Share Responsibility for Failures.

Table XII indicates the unreasonable demands frequently made by persons outside the institution in seeking paroles for offenders prematurely. Since nine months is the minimum time in which a merit parole can be earned, all cases were examined to determine in how many instances definite pressure was placed upon the superintendent during the first eight months after commitment. This table shows clearly how important and necessary it is that the institution have a definite policy under which offenders have to serve at least a year before they can become eligible to make an application for parole. Without such a policy the situation becomes exceedingly embarrassing and difficult because of the pressure placed upon the superintendent and prison board in order to obtain special paroles.

TABLE XII

Period Elapsing Between Commitment and First Application of Pressure for Parole

Pressure started in less than 1 month	9
“ “ “ 1 to 2 months	21
“ “ “ 2 “ 3 “	22
“ “ “ 3 “ 4 “	23
“ “ “ 4 “ 5 “	12
“ “ “ 5 “ 6 “	18
“ “ “ 6 “ 7 “	13
“ “ “ 7 “ 8 “	5
“ “ “ 8 “ 9 “	5
	128

There are numerous instances in which sentimentalists at the time of Christmas and other holidays demand a furlough or special parole for certain boys. In many instances, often without a basis of fact, it is alleged that the boy's mother is seriously ill. Case XIV is a good example of this practice.

CASE XIV.

4-23-23 Convicted on charge of grand larceny, age 15, sentenced 5 years, served 5 months.

The reasons assigned in the petition for this special parole are the following:

1st. Has not been proven car was taken with criminal intent. Boys were promised if they would plead guilty they would be sentenced and paroled. They did not even have an attorney.
2nd. Boy has always had a good reputation, was at time attending school.
3rd. Very desirous of getting out at this time so that he may enter high school.
4th. Mother in poor health, very much of this due to worry and grief over boy.
5th. If paroled to petitioner, will see that he attends school and Sunday school, and will assist in any way to make good.

On the face of it, these reasons are perfectly legitimate and might well justify a special parole, but the petitioner incidentally makes application for two other paroles, assigning in each case the same reasons as those mentioned above. In each instance, it is alleged the boy is not delinquent himself, but that he got into bad company; his mother is in a serious condition as the result of worry; in all instances the mother became ill over the matter.

Further, on June 12, 1923, petitioner states that as to his qualifications, he is Chairman of the County Committee from——— County, and also is the Committeeman from the ———District.

In answer to this request, the superintendent writes on June 13, 1923, that the big thing in the way of special parole is the rule of the board under which the boys must serve one year before parole. He would like to favor this case on the statement of it, but can hardly do so because of the necessity of being impartial to all boys.

The administrative officers should meet this problem not by emphasizing that the objection to special paroles is “the rule of the board,” but by emphasizing the importance of keeping a boy at the institution until he comes to himself and recognizes the error of his ways. Such an emphasis and policy would tend to change the attitude of outsiders toward persons confined in the institution. This is highly essential to success in correctional work, for unless those who communicate with inmates of the institution take a constructive attitude toward them, it is practically impossible for the officers in charge of these institutions to accomplish the end for which commitment was made.

Police Methods Not Responsible for Failures of Paroles.

It has been rumored for some time that the police as a result of a practice of hounding the boys while on parole, cause them to lose their jobs, become discouraged and fall back into old habits of associating with criminals and of committing new crimes. In following up paroles included in this study, from Kansas City, St. Louis, St. Joseph and Joplin, a total of more than 500 cases, it has been impossible to find enough evidence to verify this rumor. In all instances, the police records were examined on these parolees, in order to obtain a record of arrests previous to their commitment to the Missouri Reformatory and also of arrests while on parole. The following arrest record of Case XV is the only instance in which we have a clear case of what might be characterized as hounding by police.

CASE XV.

3-18-24	Charge, suspected of an affray, later released, insufficient evidence.
4-23-24	Charge, robbery first degree, warrant was issued, case was dismissed, insufficient evidence.
6- 8-24	Suspected of robbery, forwarded to headquarters.
6- 9-24	Released, insufficient evidence.
6- 9-24	Suspected of some of the recent robberies.
6-10-24	Released, insufficient evidence.
6-28-24	Suspected of robbery, released.
6-29-24	Charge, suspected of robbery, forwarded to headquarters.
6-29-24	Released, insufficient evidence.
8-10-24	Charge, suspected of robbery.
10-26-24	Charge, suspected of larceny.
10-26-24	Released, insufficient evidence.
5- 9-25	Charge, suspected of robbery and murder.
5-10-25	Released, insufficient evidence.
5-23-25	Charge, larceny.
5-24-25	Released, no prosecution.
6- 9-25	Charge, suspected of robbery, released insufficient evidence.
6- 7-25	Charge, burglary and fugitive from St. Louis County. He was turned over to the county authorities. Case pending.

All of the other records which show frequent arrests proved to be the records of boys who were arrested while in association with other boys or men who were police characters. Numerous cases could be introduced here, but the following is a representative one, especially in St. Louis:

CASE XVI.

5- 5-25	Arrested in company with a police character who was carrying a weapon at the time; was released, insufficient evidence.
5-10-25	Arrested, suspected of robbery.
5-11-25	Released, insufficient evidence.
5-13-25	Arrested with same man as above. L——— again had a weapon. They were placed in the holdover, suspected of robbery. Released, insufficient evidence.
5-27-25	Arrested with S———, a well-known police character. S——— is now indicted for murder. Held suspected of robbery, released, insufficient evidence.
6-14-25	Arrested and placed in holdover suspected of robbery. He was positively identified by B———, groceryman, as one of the two men who held him up June 10, 1925, taking $75. Warrant issued for robbery, first degree.

6-22-25 Arrested in cab in company with two bad characters. Placed in hold-over but released. Not identified.

6-23-25 Arrested with three very bad characters. Positively identified by B———, who conducts a grocery and butcher shop, as one of three men who held up his place, taking $400 in cash and checks from the register. Warrant issued for robbery in the first degree.

Interviews were conducted with men in the penitentiary who served former sentences in the Missouri Reformatory, and also with men in the Missouri Reformatory who had been on parole and who were returned to the institution for the violation of their parole or for the commission of new crimes, to determine to what extent the police actually hounded boys and young men on parole. These interviews established the fact that boys who had had any experiences of being arrested by the police admitted that they had been in association with police characters at the time of the arrest or they had been found in what was considered a rendezvous of professional criminals. Not a single instance was found in which boys complained of arrests who kept away from police characters and from questionable places. The most notorious instance that was encountered in these interviews was that of a young man who had been arrested in Kansas City more than 100 times, but even he admitted that his arrests were due to his association with a man who was a notorious police character.

This indicates that the police of the metropolitan communities can not justly be accused of "hounding" parolees—on the contrary it would seem to indicate a pronounced tendency on the part of the latter to return to their criminal haunts and associates; in itself a violation of the parole regulations and a contributing, if not a decisive factor, in their failure to make good.

More Parolees Fail in the City Than in the Country.

Table XIII to some extent indicates the relation of city influence to the failure of parolees. It shows that the rate of failure among parolees tends to increase in proportion to the degree of urbanization of the community from which the offenders were originally committed. Limiting our discussion to the group of absolute failures, that is, the group returned to the institution for infraction of parole rules or commitment of new crimes, it should be noted that this group constitutes 16.45% of the entire group of parolees. Using this as a base percentage, St. Louis with 25.60% and Jackson County with 19.39%, stand in contrast with the smaller percentages for other counties with a smaller urban population.

TABLE XIII

RELATION OF PAROLE FAILURE TO PERCENTAGE OF URBAN POPULATION IN CITY OR COUNTY FROM WHICH COMMITTED

	Percentage of Urban Population	Percent Returned to Institution for Committing New Crime
St. Louis City	100 %	25.60
Jackson County	91.4%	19.39
Buchanan County	83.2%	14.28
Counties with	60 to 69%	10.14
" "	50 " 59%	18.75
" "	40 " 49%	14.28
" "	30 " 39%	10.09
" "	20 " 29%	9.52
" "	10 " 19%	9.75
" "	0 " 9%	10.75

There are only two exceptions to the general tendency discussed in the preceding paragraph; one is Buchanan County, with 83.2% urban population showing a percentage of 14.28 for the group in question, and the other exception is based upon the situation in Marion and Jasper Counties, having an urban population of 60 to 69%. In these two communities the percentage in question is 10.14. These exceptions can be explained, at least in part, in terms of the efficiency of the probation work.

These percentages are significant evidence of the necessity for closer supervision of parolees in urban communities. Organized parole supervision must take the place of the control exercised in the rural communities by public opinion. The offender who returns to the rural communities knows that the public eye is constantly upon him, and if he wants to regain his status, he must be a law-abiding person. In the city, neighborhood opinion and spirit, particularly in the areas from which these offenders come, has disappeared. In certain city areas relationships, due to an almost mobile population, are impersonal and the public, therefore, has very little control over the conduct of the individual. Maintaining control over parolees in these areas requires exceedingly close parole supervision.

Interviews with parolees who have lapsed into crime show that it is doubtful whether it is advisable to return a parolee to such areas. They represent a complex of influences out of which his criminal tendencies originally developed. It is hopeless to return the parolee to the old influences and expect him to succeed. With a well organized parole staff it would be possible to investigate the homes and the people to which parolees prefer to return, and if they are found to be unfit and unwholesome, the law should enable the institutional authorities to require these parolees to locate in other communities. This is in conformity with the best practice in parole work. Moreover, as has been pointed out by the superintendent of the reformatory, there should be legal provision under which the institutional authorities can revoke the parole of any boy whose home conditions prove to be unfit. This, in many instances, would make it possible to prevent the actual occurrence of complete failure among parolees. It would also become a stimulus to parents and guardians to show greater concern about the influences with which they surround parolees entrusted to them.

With an adequate staff of parole officers in the field, it would be possible in most instances when a change of surroundings is desirable, to persuade parents to move into new localities where the parolees may have the best possible start. This is not a visionary ideal. Experience in states having a well-organized field staff proves conclusively that such a policy can be enforced.

Comparative Failure Among White and Colored.

The tabulation of the outcome of the paroles of boys classified according to race, reveals a higher percentage of failure among colored boys.

White boys constitute 78.18% of the total number of paroles studied intensively. Yet the number of white boys who were found to be making good constitutes 82.68% of the total number making good. The total number of white boys who disappeared or failed to report constitutes 75.96% of that group, and the total number of white boys who were returned to the institution for infraction of parole rules, or who were recommitted to the institution or to the penitentiary on new charges constitutes 69.11% of that particular group. In comparison with this, colored boys constituted 16.96% of all parolees. The number of colored boys who made good constituted only 15.89% of that group, and the number who disappeared and failed to report constituted 19.46% of that group, and the number returned to the institution or recommitted constituted 18.52% of that particular group. This shows that on the whole, the percentage of parole violation is higher among colored boys. Greater care should be taken in releasing colored offenders, and more careful supervision given them while on parole.

TABLE XIV

Parolees Classified by Race and by Outcome of Parole

Color	Total of All Cases	Making Good	Disappeared, Failed to Report	Returned to Institution or Committed New Crimes	Army or Navy	Miscellaneous Dispositions
White.......	78.18	82.68	75.96	69.14	53.33	66.67
Colored......	16.96	15.89	19.46	18.52		11.11
Unknown....	4.86	1.43	4.58	12.34	46.67	22.22
Total......	100.00	100.00	100.00	100.00	100.00	100.00

The Relation of Charges to Success and Failure.

Table XV, which includes the charges for which offenders were committed to the institution, is very unsatisfactory, because 37.99% of the commitments were made on a blanket charge of "delinquency." Many of these commitments were undoubtedly made on serious charges, but it is impossible to determine their nature. However, among those committed on specific charges, robbery heads the list. This is due to the practice on the part of St. Louis judges to commute a large number of penitentiary sentences for robbery to the reformatory. Grand larceny stands second, and burglary and larceny third.

TABLE XV

Percentage Distribution of the Several Outcomes of Paroles Classified by Offenses for Which Convicted

	Total of All Cases	Making Good	Disap., Failed to Rep.	Retd. to Inst., Com. New Crimes	Armory Navy	Misc.
Manslaughter	.20	.18	.38			
Rape	1.09	1.97				
Attempt rape	.50	.71		.62		
Assault to kill	.30	.36	.38			
Assault to rob	.10		.38			
Assault to rape	.40	.36	.76			
Assault to do other fel.	.10	.18				
Carry conc. weap.	.69	.18	1.91	.62		
Kidnapping	.20	.36				
Burglary	5.46	5.53	6.11	4.32	6.67	
Burg. and larc.	11.31	10.00	15.27	9.26	6.67	22.22
Robbery	12.00	14.11	6.11	14.81	13.33	
Attempt robbery	.30	.36		.62		
Grand larceny	11.80	12.50	12.59	8.02	13.33	11.11
Petit larceny	5.26	5.00	7.25	3.09	6.67	
Larc. from dwell.	.50	.53	.76			
Larc. of auto	.99	.89	1.15	1.23		
Larc. from person	.10	.18				
Stealing domestic fowls night time	.89	.71	1.53	.62		
Embezzlement	.30	.36			6.67	
Forgery	3.17	2.86	2.67	4.32	6.67	11.11
Receiv. stolen prop.	.40	.53		.62		
Incorrigible	3.27	3.21	4.20	2.47		
Delinquent	37.99	35.36	37.02	47.53	39.99	55.56
Arson	.20			1.23		
Miscellaneous	2.18	3.21	1.53			
Liquor laws	.30	.36		.62		
	100.00	100.00	100.00	100.00	100.00	100.00

While the percentage of commitments on the "blanket charge" of delinquency constitutes only 37.99% of the total number of commitments, the percentage in this group who are returned to the institution for infraction of parole rules or who are recommitted on new charges is 47.53%. This suggests that the courts make it a practice to commit offenders under the blanket charge of "delinquency" whose criminal tendencies have become established and who are recidivists.

This practice should be discontinued. An offender who is a recidivist should be labeled as such in order that he can be treated according to his merits. When he is committed on a serious charge, that charge should be specified.

The table further shows that the percentage of offenders convicted of robbery, as well as the percentage of those convicted of forgery, who are in the group of those who were returned to the institution or committed for new crimes, is higher than the percentage of the respective groups for those two charges.

Relation of Age to Success of Paroles.

TABLE XVI

PERCENTAGE DISTRIBUTION BY AGES OF PAROLEES CLASSIFIED BY OUTCOME OF PAROLE

Age	Total All Classes	Making Good	Disappeared Failed to Report	Returned to Inst. Committed New Crimes	Army or Navy	Miscellaneous Disposition
7	.10	.18				
8	.10	.18				
9	.39	.18	.38	.62		11.11
10	.79	.71	.38	1.23		11.11
11	1.58	1.25	2.67	1.23		
12	2.77	2.68	3.05	2.47	6.67	
13	4.06	3.75	3.44	5.56	13.33	
14	8.63	7.68	9.54	9.88	6.67	22.23
15	11.01	11.61	11.45	7.41	6.67	22.22
16	18.84	17.86	19.85	22.22	6.67	11.11
17	18.84	18.21	21.76	16.05	26.66	11.11
18	12.50	12.32	12.60	14.20		11.11
19	9.52	10.00	9.92	8.03	6.67	
20	4.36	5.54	1.53	3.70	19.99	
21	2.28	2.50	1.91	1.85	6.67	
22	1.48	1.96	.76	1.23		
23	.69	.89	.38	.62		
24	.49	.71		.62		
25	.59	.89		.62		
26	.10	.18				
27	.10	.18				
28	.19			1.23		
30	.10		.38			
Not shown	.49	.54		1.23		
	100.00	100.00	100.00	100.00	100.00	100.00
Number of cases......	1008	560	262	162	15	9

ADMINISTRATIVE WEAKNESSES

Prison Board and Superintendent Have Released Control of Offenders Prematurely and Too Completely.

It has been pointed out above that according to the sentences imposed the reformatory is responsible for effective control over those committed for an average period of 50.6 months. The average period of confinement before parole is 11.5 months, a period which is spent in the reformatory under the administrative control of 60 employees. After parole these offenders are theoretically under the control of a single employee, the parole officer, until their sentence expires. Thus during an average of four-fifths of each sentence the offender is responsible to the parole officer. That this responsibility is a mere theory is shown by the fact that our evidence indicates that, as far as parole violators are concerned, in seven months after parole, control is completely lost.

TABLE XVII

Parole Violations Classified by Number of Months Between Date of Violation of Parole to Expiration of Sentence

Month	Numbers
1- 5	25
6- 10	54
11- 15	28
16- 20	27
21- 25	30
26- 30	44
31- 35	66
36- 40	27
41- 45	28
46- 50	29
51- 55	13
56- 60	8
61- 72	14
73- 84	10
85- 96	6
97-108	9
109-120	3
Ind. term	1
No record	2
	424

Numerical average—421 cases—32.65 mos.

Table XVII shows that control is completely lost over parole violators on the average 32.6 months before the expiration of their sentence. This is simply intolerable. Every county must pay the prison board $15.00 a month for each offender committed, for employing a staff of 60 men and for maintaining the reformatory. These resources are practically all expended while the offender is in the institution for a few months, after which he must fight the battle of his life practically without aid or supervision.

The Inadequacy of Present Parole Supervision and After Care.

There is a definite relationship between the amount of supervision parolees receive and the rate of success of parolees. A survey which covered this problem in nineteen states in 1915 disclosed facts which indicated conclusively "that no state with a low percentage of supervision attains a high percentage of men making good on parole."[1]

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[1] Brown, B. W. "Parole an Institution of the Future." Jour. Crim. Law, 6:69.

The task assigned to the single parole officer has been too great. In the first place, it is doubtful whether 30% of those paroled were really ready for parole either from the point of view of their attitude toward work and toward normal living, or from the standpoint of the conditions and environment into which they were released.[1] Moreover, the average number under his supervision has exceeded 800, a task which according to all approved standards is at least four times too great for one officer.

The present plan under which the parolees included in this study have been out on parole, has required that:

1. They keep away from associates who have criminal tendencies;
2. Work regularly, or if of school age, attend school;
3. Attend Sunday School regularly;
4. Report to the parole officer once a month during the first year after release, and after that quarterly for the second year, and then semi-annually until the time of expiration of parole.

The plan of supervision has provided that the parole officer visit Kansas City, St. Louis, St. Joseph, Joplin, and Springfield once a month, to receive these monthly reports in person from the parolees. From all other communities they are expected to report by mail.

Under this plan it has hardly been possible for the parole officer to be more than a clerk of record and police officer who brings back to the institution such parole defaulters as can be apprehended in the communities visited. He does not have time to do intensive case work. Parole supervision has meant largely an effort to watch parolees so that they would not do anything wrong, rather than to aid and help them to become successful citizens. The plan provided that each month three days were spent in St. Louis to interview, if possible, 255 parolees from that city and to receive their monthly reports. Most of the parolees who work report in the evening. This generally means that they gather in fairly large numbers in the waiting room awaiting their turn to see the parole officer. Thus they form contacts with boys who formerly were at the reformatory. Such contacts are not desirable because they frequently encourage a relapse into former habits of crime.

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[1] In a properly organized parole department, no offender would have been paroled until: (1) a careful study revealed his fitness for parole; (2) profitable employment had been found for him; and (3) his home and neighborhood had been found to be fit for his return. Yet under the merit parole system no such requirements have been made and the parole officer has had no voice in determining when an offender might be paroled. That was determined mechanically by the merit system in all cases excepting special paroles, which are granted by the prison board upon recommendation of the superintendent.

It would make for economy and efficiency in the long run if the counties were required to pay $3.00 per month for every parolee who was a county charge while at the institution. This would provide an adequate budget, and would make possible an organization for parole work as is outlined below.

To supervise parolees adequately there should be at least a full time staff of four trained, mature, efficient men. At least one should be stationed in St. Louis and give all of his time to supervision and after-care of parolees in that community. Another should be assigned to Kansas City and St. Joseph, with headquarters in Kansas City. A third should be available to visit the more populous counties in interior Missouri. The chief parole officer should remain at the institution to supervise all of the parole work. If such a staff were provided it could also standardize probation work, particularly in rural communities.

Premature Paroles Encourage Lawlessness.

Reducing the average length of sentence from 50.6 months to 11.5 months has a tendency to encourage many of these parolees to return to their former adventures in crime. Their punishment has had practically no deterrent effect because it was reduced by four-fifths, not because their attitude toward society's conventions, laws and values justified it, but because their release was mechanically and arbitrarily granted on a time-basis. They have not, moreover, been away from their old environment or their old associates long enough to keep them from following the line of least resistance, which is to continue their criminal career.

Aside from the effect upon the individual offender who receives a premature release, we must bear in mind the effect of such a release upon the whole administration of criminal justice. It is bound to undermine public confidence, and what is worse, to encourage greater activity among organized and potential criminals. Each premature release is a definite influence in eliminating the last vestige of fear of punishment.

Absence of Method of Identification Cripples Work.

The absence of a method of identification means that effective control over offenders in the institution or out on parole is not possible. More than 5% escape successfully while inmates of the institution, and nearly 25% of the parolees disappear, or fail to report, shortly after they are permitted to leave the institution. These problems would be greatly minimized and a large amount of energy and money now expended to grapple with them could be saved through the services of an effective method of identification.[1]

A few would-be reformers and sentimentalists may object to the establishment of a method of identification at the institution on the grounds that there should not be any permanent records made of youthful offenders. This claim is not worthy of any serious consideration. It does not take account of the fact that the Missouri Reformatory deals largely with recidivists, and that one reason we have recidivists is because we have no method of identification, one of the indispensable necessities in gaining and maintaining control over offenders. Certainly methods of identification should be employed in dealing with all offenders who are more than sixteen years old. The majority of intermediate reformatories of other states that handle offenders from 17 to 30 years are equipped with facilities for identification.

Industrial Adjustment and Training.

Table XVIII contains data regarding the month in which the institution lost its control over the parole violators. This table establishes the fact that the most important time in the life of the parolee, from the standpoint of protecting him, is very soon after his release. By far the greatest number of violations and of failures occur in the first month after release. It is important to note that the average length of time from the date of parole to the *date of failure* in the group returned to the institution for infraction of parole regulations or committed on new crimes, *is only 6.90 months.* This suggests on the one hand that those who were released were not prepared for the release, and in many instances did not have any intention of becoming law-abiding citizens. On the other hand, in a great many instances parolees were not properly prepared from the standpoint of industrial training at the time of their release and were not able to make the economic adjustment which had to be made.

Interviews with men whose paroles had been revoked and who had been returned to the institution disclosed the fact that they had serious difficulty in making their economic adjustment. This difficulty was two-fold: some were not properly trained; others did not have the ambition or the purpose to go out into the world to do their part of the world's work.

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[1] The present practice of whipping inmates for attempts to escape is an undesirable method of dealing with this problem, especially as applied to older offenders. It is the most effective method that could be devised of building up a grudge against society and does not eliminate escapes.

TABLE XVIII

Time Elapsing Between Date of Parole and Date of Violation of Parole

No. of group Failing to Report, Disappearing	No. of group Returned Inst. Com. New Crimes	Month
50	33	1
24	22	2
15	14	3
16	12	4
12	14	5
15	12	6
5	7	7
10	10	8
6	5	9
6	7	10
30	9	11-15
14	2	16-20
14	3	21-25
12	12	26-55
Total 229	162	

While in this survey no attempt has been made to study the internal administration of the reformatory as such, it is quite evident that in no department is enough provision made for industrial training. Training, machinery and equipment are inadequate, and few inmates can be taught to perform useful work before they are paroled. The state is thus neglecting one of the first essentials in preparing offenders to make their way after release and to achieve a normal place in the world.[1]

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[1] The equipment and facilities for industrial training are inadequate in practically every department. In many instances the heads of departments admitted to the author that the machinery and equipment provided in their departments was obsolete and that they were not prepared to give to the boys and the young men an adequate preparation to earn a living. Thus, for instance, in the printing shop six boys were engaged in setting type by hand. They try to work with a machine which is nothing but "junk." This means that regardless of how proficient they may become in this work, they will not have learned to operate a linotype by the time they are released from the institution. Yet they cannot get a position in any modern printing shop unless they can do so. It also means that there can be little incentive for a boy to put forth his efforts in the mastery of the work of this department. There is little reward of permanent economic value ahead because mastery of the machinery in this department will not enable the boy to succeed when he is released from the institution.

If this department were equipped with modern machinery a large portion of the state's printing job could be carried on in this institution, and each year a large class might be trained to become proficient in operating a lino-casting machine.

Again, in the mechanical division we find a blacksmith shop that would have been suitable twenty years ago, but we do not find any training in that division which would prepare the boys who spend their time in this department to take a position in a garage. It is obvious that if the department were properly equipped mechanically and had trained instructors, a great many boys might each year complete such preliminary training as would enable them to find remunerative work in garages and mechanical shops.

In the tailor department there is no equipment or training which would enable the inmates to become proficient tailors. All that we have is a poorly equipped patch shop.

The barber shop is merely a room in which inmates do the barber work for inmates. There is neither training or equipment for the training of qualified barbers.

There are always a great many boys who would like to learn bookkeeping and

Care of Feeble-minded Inadequate.

The survey of Dr. Thomas H. Haines of the population of the reformatory in the latter part of 1920 showed that 16.8% of the inmates were definitely sub-normal mentally, that almost 10% were actually feeble-minded. The latter group of defective delinquents should receive beneficial training under teachers trained to deal with the feeble-minded. They should certainly not be released under the merit parole system. They are not fit subjects for parole, because they are not capable of exercising self-control. Many of them cannot be held accountable for their acts because they are incapable of comprehending the consequences. In well standardized parole departments such individuals are not considered for parole but are transferred to the proper institution for custodial care. Missouri should adopt a similar policy.

Until legislation and facilities can be provided to carry out such a policy, special teachers should be employed for the handicapped children. The law providing for $720.00 special aid from the state school funds for every class of ten sub-normal persons would enable the prison board to obtain the necessary funds with which to employ properly trained teachers.

Provision for Leisure Time Activities Inadequate.

One of the essentials in correctional work is to help offenders acquire wholesome habits in the use of leisure hours. The institution is greatly hampered in such work. First, it has no gymnasium in which the inmates of the institution might spend their leisure hours in athletic games and physical exercise. When the weather becomes unfavorable so that it is impossible to carry on recreational activities in the open, such activities have to be suspended and many of the men have to be herded in the dingy basement of their dormitory building.

There is no reading room or library other than a single small room in which some books are stored, most of them old and not sufficiently interesting to be read by many of the inmates. In the absence of a reading room, library or a gymnasium, in which the long evening hours might be spent in constructive pursuits beneficial to the physical, mental and moral welfare of the prisoners, they are put to bed at seven or seven-thirty o'clock in the evening. This means that the institution not only loses an opportunity to build up strong healthy

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stenography. Yet in the commercial department of the school there is no teacher trained to teach the boys in either of these activities. There is no equipment except one old worn-out typewriter.

Department heads and the superintendent have frequently urged the prison officials to make more adequate provision for industrial training, but without success.

bodies and minds, but it directly invites certain sordid kinds of irregular conduct.

Individualized Treatment Necessary.

The principal of the school work has attempted to make a study of the inmates, but he is employed to attend to such a great multitude of other duties that he cannot be expected to do much with the task of individualization. There is at present not even a segregation of vicious and degenerate offenders from those who are first offenders who would be very responsive to reform influences. The present equipment and facilities do not make it possible to classify offenders, yet such classification is the first step to effective treatment. At the present time it is nobody's task to make a careful study of each offender committed to the institution. This is true, in spite of the fact that the trend in successful treatment of offenders during the past twenty-five years has been to classify and to attempt to individualize them as much as possible.

It would be just as reasonable in case a city were overtaken by a typhoid epidemic which caused six hundred or more persons to become seriously ill, apparently due to the epidemic, if the attending physician mapped out a blanket program which was to be followed by all individuals, irrespective of what might be their individual ailment or need. Everybody knows that a physician does not proceed in his work in that manner. He makes a careful diagnosis of each case before he makes his prescription. He does this because it is the only way in which to treat disease successfully. The same can be said for the offenders confined at Boonville. If their confinement is to help them to change their attitude toward society, it is necessary that they be treated as individuals in small groups that present similar problems.

Such treatment does not mean that the offenders are to be coddled. Nothing of the kind is implied. It simply means that a careful attempt should be made to find out in each individual's case what may have been the cause of his tendencies toward crime, and how to correct these tendencies. Such a study would cover the following points:

1. The offender's background, including his family history as well as a study of the early influence of his home and neighborhood which may have caused his delinquency. Such information should be submitted in the commitment record.
2. Careful physical and mental examination followed by such treatment as may be required.
3. A study of his conduct problems or moral difficulties.

4. Occupational aptitudes and interests and such occupational training as will make a successful economic adjustment possible.
5. Schooling and school record.
6. A study of the offender's resources from the standpoint of the future and the formation of a plan by which he is to make his adjustment in society when the time comes, when it is safe to release him. If his old environment is found to be unfit for his return, he should be paroled into helpful surroundings.
7. The length of incarceration should be conditioned upon these facts considered from the standpoint of the best standards in parole work.

The merit system that has been in vogue in recent years does not involve such individualization or classification as is here outlined. All that it has done is to credit the boy arbitrarily each week with a stated number of merit points if he and the company to which he belongs keep out of trouble. No attempt is made to find out at the time he has earned his 2700 points whether his attitude toward society is satisfactory. He may still have criminal intentions and definite plans for carrying out new crimes immediately upon release. The merit system takes no account of his intentions or his attitudes or even of his qualifications to earn a living. It also does not take into consideration his environment from which he has come and to which he almost invariably returns.

Responsibility for this utter lack of individual treatment at the present time must be shared by judges of the juvenile courts. They commit practically all persons to the reformatory with a record which shows "no previous criminal record" even though the person has been under the supervision and control of the local juvenile court six or eight years and has been committed to a local institution several times. To be sure, it would be unjust to sentence a boy to the reformatory on the basis of his previous criminal record. But in the interest of public welfare, it is imperative that a boy who has repeatedly, by the commission of new crimes, shown that he does not intend to be a law-abiding citizen, should not be thrown in the same class with the person who accidentally or as a result of extraordinary circumstances makes a mistake and is committed to the reformatory actually as a first offender. Judges and probation officers should furnish institutional authorities with a summary of all vital facts bearing on an offender's delinquency and crime, and also his response to local efforts of probation and moral suasion.

More Bookkeeping Necessary.

Individualized treatment of offenders requires more complete records on each inmate of the institution than are at hand at present.

Circuit judges should submit a summary of all important facts as outlined above.

Further, complete progress records should be kept for each person while in the institution, and later while he is on parole.

Statistics should also be compiled each year regarding the most important facts that can be tabulated covering the work of the institution in each department, including a detailed statement of the outcome of parole work. Such statistics are necessary for efficient administration. It is just as impossible for a correctional institution to be efficient without having complete statistics as it would be for a large business firm to carry on its work profitably without keeping books and accounts. Adequate statistics compiled at least once a year would enable the administrative and executive officers to take stock each year of their very important work. In this way they would discover weaknesses and the outstanding problems in their work, as well as the bases of success. Such a discovery is the first essential to the formulation of constructive policies.

In this statistical work close co-operation with the Bureau of Identification of the Missouri Penitentiary is desirable. It was discovered that in many instances parole defaulters from the reformatory had been committed to the penitentiary for new crimes, but the parole officer had not been notified of that fact and he was still carrying them on his records as being on active parole but as having failed to report.

Intermediate Reformatory Needed.

The evils arising in the administration of the reformatory as a result of commuting older and hardened offenders to the reformatory have already been indicated. The age distribution of the parolees included in this study shows that 32.8% are from 18 to 30 years old. In other words, one out of three should have been sent to an intermediate reformatory. Even aside from the serious overcrowding, the present situation makes it impossible to classify the inmates so that effective work can be done at the reformatory.

It is recommended that the institution at Boonville be adapted and properly equipped for the work of a training school for boys between seven and seventeen years, inclusive. To do this and to provide properly for young offenders between 17 and 30 inclusive who are now committed to the penitentiary, the state should establish an intermediate reformatory for offenders from 17 to 30 years of age. Such a reformatory should be properly equipped to segregate and classify offenders and to train them to become useful citizens.

An institution of this nature was recommended to the General Assembly of 1913 by Governor Hadley, and has been recommended to that body at practically every biennial session since that time. It is in line with development in other states. Sixteen states have already provided such institutions. Answers received to a questionnaire submitted to the circuit judges of Missouri show that they practically unanimously favor the establishment of an intermediate reformatory for the purpose outlined above.

Board With Equal Representation of Political Parties Needed.

At the present time the Missouri Reformatory is under the control of the Department of Penal Institutions, which consists of five members, not more than three of whom can belong to the same political party. This invariably means that the party in control has a majority, and every change in the administration of the state involving a change in party control tends to bring on a heavy turnover in the staff officers and employees, particularly at the reformatory and the penitentiary. This was well illustrated by the facts incident to one of the changes of administration. At the time when the change took place it is stated that 11 out of 62 officers and employees represented the party having a minority on the prison board. Thirteen months later after this party came into control and had a majority on the board, it had 49 out of 64 representatives in the staff of officers and employees. In a single department of the institution, the educational department, more than 60% of the teachers were changed during the period when the classes were in session. No institution, certainly no correctional institution, can hope to remain efficient under such circumstances.

It has become a matter of party practice and tradition to reward party politicians and political bosses for their services to the party with jobs in these institutions. This means that party loyalties and promises rather than fitness for office tend to determine appointments and the length of tenure of office. It means that a spoils system rather than a merit system prevails in our correctional work and this work can never be lifted to the level of a profession where men of high calling, and trained men, will be in control to make our reform work a credit to the state.

Only recently one of the former wardens of the penitentiary said to the author of this report that the spoils system is the curse and ruin to efficient correctional work in Missouri. He said while he was in office he received between 300 and 400 applications from politicians, members of the party in power, for positions; that had he made a single appointment ignoring party preferences there would have been a revolution among these politicians clamoring for appointments. In contrast with this situation, he added: "I received letters from nearly every prison board in the United States asking for recommendations for important positions they wanted to fill in their institutions, but not one of them mentioned anything about the party to which the nominee should belong."

We do not mean to insinuate that our penal and reform work never attract good and able men. We merely indicate that appointments have frequently tended to be due to politics rather than to be on the basis of professional training or experience in correctional work. Tenure of office under such a regime is looked upon as temporary and uncertain and as being fraught with many hazards. In fact, tenure of office as a rule is too short and political battles are too acute to make it possible for the prison board or superintendent to conceive or to work out far-reaching constructive policies. This is not intended as an attack upon personalities or upon the administration of any governor. It is merely a criticism of a partisan political spoils system that is so thoroughly ingrained in the political traditions and practices and in the political thinking and attitudes in every county of this great state that it has become practically impossible to make any permanent or far-reaching improvements in the institutional treatment of offenders in Missouri until we solve this basic problem. It appears to be almost humanly impossible for any administration to eliminate the spoils system as long as we have a law which creates a partisan penal board and in so doing invites and keeps alive all of the old political spoils system practices which are so deep-seated and of such long standing.

It is obvious to anyone who has had any administrative experience, particularly in institutional work, that the first essential to efficiency and success is continuity of personnel. If worthy and efficient men and women are to be permanently interested in carrying on the work of the reformatory, the state must assure them security in their work. Appointments should be made upon the basis of competency, and tenure of office should be indefinite and should depend upon efficiency.

To make this possible, a non-partisan Department of Penal Institutions, having an equal number of each party, should be created. Governor Hyde recommended the creation of such a department to the General Assembly of 1923.

Summary and Conclusions

1. The purpose of the Missouri Reformatory at Boonville, as stated in the law, is to reform young offenders "by careful

physical, intellectual, and moral training." Originally only young offenders between ten and sixteen years of age were admitted, but the upper age limit has gradually been raised to thirty years.

2. Paroles for good conduct were authorized from the beginning. Until 1909 such paroles were authorized only after offenders had served eighteen months. Since that time there has been no fixed minimum.

3. Practically all releases from the institution in recent years have been by means of parole. The number released in this way has been 85%, while less than 5% have served their full sentences.

4. The average time in which the more than 1000 recently paroled offenders whose cases we have studied, obtained their releases, was 11.5 months. The average length of sentences for which they were committed was 50.6 months. Even feebleminded offenders have made the required number of merit points in 12 months, while some habitual criminals have been released at the end of 9 months.

5. Special paroles which are granted by the superintendent with the approval of the present board are often given for unworthy and indefensible reasons. The power to grant these special paroles has submitted present officials to undue pressure from political sources.

6. Of the parolees who were investigated 24% had disappeared or failed to report and 21% had committed new crimes or had been returned to the reformatory for breaking parole regulations. It is probable that a full 50% of paroles granted result in failure. This is higher than most other states. Indiana had 25% of parole failures, New York and Massachusetts 19%, Minnesota and Wisconsin 16%, Illinois 14%, Ohio 13% and Pennsylvania 10%. Missouri actually had 46.81%.

7. Many of those offenders who are in the reformatory come from defective homes. It was found in nearly one-half of the cases considered that the homes were broken by the death of one or both parents.

8. In many instances judges have submitted commitment records showing "no previous criminal record" while an examination of the local juvenile court records show many previous commitments for delinquency.

9. In many instances defective local work is responsible for parole failures. For example, the number of probation officers

provided in St. Louis is so small that each probation officer has 156 cases while the average in nine of the largest cities in the United States is 85. In Kansas City each probation officer must look after 200 cases. The McCune Home in Kansas City shows a very large percentage of escapes. This defective work in connection with young offenders undoubtedly exercises considerable influence in developing confidence among young offenders in their ability to "beat the law."

10. Every fifth offender committed to the reformatory was a federal prisoner and 30% of these were violators of the Federal Drug Act. These latter should certainly not be thrown into intimate association with young boys.

11. The difficulties of the reformatory are increased by the commitment of offenders who, after being sentenced to the penitentiary, have received a commutation of sentence to the reformatory. The courts of St. Louis are especially responsible for much of this practice.

12. The prison board and the superintendent have not developed a definite policy under which special paroles may not be granted until the offender has been kept a definite time. Failure to do so has made it possible to apply political pressure for paroles altogether too soon after the offender has been committed.

13. We have found that the charge that police officers in large cities have unfairly "hounded" parolees, is unfounded. In practically every case where parolees have been arrested there has seemed to be some good reason.

14. The rate of failure among parolees is highest in the large cities. The rate of failure is higher among colored than among white boys.

15. From the standpoint of charges it was found that the rate of failure is highest among those who were committed on a charge of delinquency. Robbery stands second, grand larceny third, burglary and larceny fourth.

16. On account of the fact that there is only one state parole officer with a great number of parolees whom he must supervise, he has become little more than a clerk of record and an arresting officer to return parole failures to the institution.

17. There are no adequate methods of identification at the institution. The industrial training provided in the institution as well as the equipment and resources available for spare time activities are most inadequate.

18. Inadequate training is given to the feeble-minded and sub-normal in the institution. In 1920 between ten and twenty percent of the inmates were sub-normal mentally.

19. The reformatory keeps most inadequate records.

20. The fundamental trouble with the administration of the institution is the fact that the majority of the board belong to the political party in power and thus every change in state administration brings about a turnover in the staff of officers and employees. With the spoils system thus entrenched it is impossible to expect efficient administration.

RECOMMENDATIONS

1. The basis of parole should be modified by the adoption of the following policies:

A. Winning of the merit points, required at present, should not entitle the individual automatically to a parole, but should be a prerequisite to be met before application can be made for a hearing for parole.

B. Fitness for actual parole should require:

    a. Evidence that the offender is able and willing to respect the law. Parole should come only as a recognition of an acknowledged achievement in attitude and conduct.

    b. Probability of success of conditional release in view of the criminal's career prior to commitment and his institutional record.

    c. That paroles should tend to be in harmony with the sense of right of the community from which the individual was committed. It should strengthen public confidence in the administration of criminal justice.

    d. Finding of profitable and suitable employment for persons old enough to work, before release, particularly if they are dependent upon their own earnings for a livelihood.

    e. That homes and sponsors should be investigated in person whenever there is any doubt as to their suitability.

C. Special paroles should be restricted to extraordinary cases in which the trial judge recommends a special parole. Trial judges should co-operate with the superintendent.

D. The parole regulations should be enforced rigidly. Infraction of conditions of parole which indicates individuals unfitness for living in a free community should be followed by revocation of parole and return to institution.

2. The seven-twelfths rule, which was made applicable to persons committed by circuit courts to the penitentiary whose sentences were commuted to the reformatory and also to persons committed by juvenile courts on major felony charges, should be modified in the following respect. Such persons should become eligible for making application for parole upon having served seven-twelfths of their sentence. If released before the expiration of sentence they should be placed on parole so that the institution can maintain its control over them until their sentences expire.

If persons, whose sentences were originally penitentiary sentences violate the conditions of their parole, they should be sent to the penitentiary and should not be returned to the reformatory.

3. All inmates who are repeaters should be required to serve at least seven-twelfths of their sentence before they can make application for parole.

4. Neglected children who are homeless or who live in hopelessly defective homes should not be sent to the reformatory, but placed under the supervision of the Children's Bureau of the State Board of Charities and Corrections for placement temporarily or permanently in wholesome homes. The practice of throwing neglected children into association with delinquent children in the reformatory or in the McCune Home in Jackson County should be discontinued.

5. Circuit and juvenile court judges should submit full information regarding each person's criminal record, his family history, early influences that bear on his delinquency and the individual's response to probation efforts. Such information should be made a part of the commitment record.

6. The Legislature of 1927 should authorize the construction of an intermediate reformatory and appropriate sufficient funds to make it possible adequately to train and give employment to all first offenders between the age of 17 and 30 who are now commuted to the reformatory or committed to the penitentiary. When this is done the present reformatory should be made The Missouri Training School for Boys. It should receive only boys between 7 and 17 years of age.

7. An effective method of identification should be established at the reformatory.

8. Adequate equipment for industrial training should be provided, and whenever boys do not have a guardian or parent who can assume responsibility for the individual's industrial training, they should be retained at the institution long enough to be trained adequately.

9. Under the law providing for state aid in the education of handicapped children, aid should be obtained from the state school funds for the employment of teachers trained to teach feeble-minded and sub-normal children.

10. A suitable gymnasium, library and reading rooms should be provided.

11. Offenders should be prepared more carefully for parole: each offender should be studied carefully as outlined above; complete records kept on each case and of all of the activities of the institution, and statistics compiled at the end of each year which will adequately reflect the nature of the problems with which the institution is dealing and which will give a reliable index to its successes and failures.

12. The Department of Penal Institutions should consist of an equal number of representatives of the two dominant political parties.

13. The parole work should be expanded. At least three additional field workers should be employed, one to be stationed in St. Louis, the other in Kansas City and the third to work out from the central office. If necessary, a law should be passed requiring counties to pay a definite amount per capita for all persons on parole originally committed from each respective county.

PARDONS, PAROLES AND COMMUTATIONS

SECTION II

RELEASES FROM THE MISSOURI PENITENTIARY

INTRODUCTION

The State of Missouri has only one prison, known as the Missouri Penitentiary. It is located at the seat of government,—Jefferson City. It was established by the General Assembly of 1833 for the purpose "of confining such persons as shall be convicted of offenses made punishable by imprisonment and hard labor."[1] Prisoners were not received at the institution until 1836. Thus the institution has now served the state ninety years, and in this span of time has been the principal place for confining persons convicted of serious charges. Up to 1889, when the Missouri Reformatory was opened, it was the only correctional institution provided by the State. Even youthful offenders were committed to it.

In this report our interest is centered in the methods that have been employed in releasing prisoners from the penitentiary. An examination of Table I will give the reader a graphic picture of the six most important methods by which prisoners have been liberated from the institution since its opening. The table shows the number and the percent of prisoners discharged, classified according to type of release.

An examination of the table shows that in the period of ninety years since the penitentiary was opened, six important methods of release have been used in liberating prisoners from the institution. The earliest and the most important mode of release during the first thirty-six years of the history of the institution was pardon. Actually 45.55 percent of all releases prior to 1871 were pardons.

The popular view of a pardon is that it is an executive act of clemency by means of which the prisoner is released from the institution prior to the expiration of his sentence. In a number of important decisions a pardon has been interpreted as an act by means of which the prisoner's conviction has been declared unjust and he has been set free.[2]

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[1] Laws Mo. 1833, p. 86.

[2] "The pardon is an act of grace proceeding from the power intrusted with the execution of the laws, which exempts the individual on whom it is bestowed from the punishment the law inflicts for a crime he has committed." U. S. vs. Wilson, 7 Peters U. S. 150-160.

TABLE I

Number of Inmates Received and Number Released at Missouri Penitentiary, 1836—Nov. 1, 1925

Six Principal Types of Release Classified
(For Minor Releases see Table I-A)

Time Period	Total Recd.	Full Time		Under ¾ Law		Pardoned		Commuted by Gov.		Paroled		Merit Commutation	
		No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
1836 1870	5269	1484	32.98			2050	45.55						
1871 1872	849	114	12.93	463	57.52	157	19.63						
1873 1874	1705	34	3.08	558	57.11	244	32.49						
1875 1876	1413	35	3.05	854	74.52	39	3.40						
1877 1878	1237	43	3.28	968	74.01	133	10.16						
1879 1880	1045	26	2.19	899	75.74	103	8.84						
1881 1882	1187	15	1.40	854	79.74	88	8.20	6	.56				
1883 1884	1299	4	.36	911	81.19	84	7.49	16	1.43				
1885 1886	1377	3	.23	1109	86.64	81	6.32	16	1.24				
1887 1888	1532	13	.97	1197	82.11	52	3.82	7	.52				
1889 1890	1448	15	.94	1290	80.98	130	8.16	74	4.64				
1891 1892	1426	6		1218	85.66	89	6.26	66	4.63				
1893 1894	1980	3		1267	84.64	78	5.21	39	2.61				
1895 1896	1923			1692	90.00	91	4.84	14	.75				
1897 1898	2040	1		1700	87.90	109	5.63	42	2.17				
1899 1900	1698	15		1628	85.69	151	7.95	36	1.90				
1901 1902	1684	8		1437	83.06	136	7.86	43	2.48				
1903 1904	1794	2		1354	79.79	128	7.54	115	6.78				
1905 1906	1704	4		1400	80.00	59	3.31	107	6.12				
1907 1908	1678	6		1372	84.92	3	.19	132	8.17				
1909 1910	1792	1		1382	77.25			55	3.08	252	14.09		
1911 1912	2197	1		1484	78.14			5	.26	306	16.11		
1913 1914	2245	5		1508	69.78	2	.09	184	8.52	353	16.15		
1915 1916	2646	1		1420	66.44	2	.09	14	.65	664	30.60		
1917 1918	2321			901	32.78	101	3.67	170	6.22	573	20.84	792	28.85
1919 1920	2004	3		160	7.08	2	.09	8	.35	360	15.88	1528	67.57
1921 1922	2022	1		124	6.01	2	.09	13	.63	249	12.12	1529	74.48
1923 1924	2229	2		13	.70	2	.11	48	2.59	140	7.57	1494	80.94
1-1-25 to 11-1-25						2	.20	11	1.11	21	2.11	907	91.79

From a legal and judicial standpoint the function of a pardon is to remedy an injustice arising out of an unjust application of criminal law—either by convicting an innocent person or by imposing too severe a sentence.

Pardons may be made conditional. The offender may remain under the control of the authorities of the institution, subject to the conditions set forth in his conditional pardon.[1]

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[1] The following differentiation between a pardon and a conditional pardon is helpful: "Pardon implies forgiveness; but that element has no place in a conditional pardon. It is merely a device by means of which executive clemency can be exercised in behalf of a guilty person, without setting aside the judgment of the court regarding his guilt, and without absolutely relieving him from punishment." Spalding, Warren F. Am. Prison Ass'n. 1916, p. 461.

TABLE I-A

SUPPLEMENT TO TABLE I

SHOWING NUMBER OF INMATES RELEASED AT THE MISSOURI PENITENTIARY BY MINOR METHODS OF RELEASE 1836—NOV. 1, 1925

Time Period	Transfer to Reform School	Transfer to Asylum	Escaped	Died	By Action of Supreme Court	Miscellaneous
1836 1870			261	180	7	518
1871 1872		1	20	22		28
1873 1874		1	27	38		75
1875 1876		2	61	107		48
1877 1878			55	74		35
1879 1880		11	24	53		71
1881 1882			30	41		37
1883 1884			33	43		31
1885 1886			19	37		15
1887 1888			14	42		11
1889 1890			14	53		17
1891 1892	1		1	29	13	
1893 1894	16	8	11	52	23	
1895 1896	10		11	55	6	1
1897 1898	7	6	6	46	11	6
1899 1900	3		7	55	5	
1901 1902	1	49	3	42	8	3
1903 1904	3	6	11	68	6	4
1905 1906	7	26	12	48	15	74
1907 1908	3	25	6	55	11	3
1909 1910	12	45	3	30	8	1
1911 1912	20	25	11	48	8	1
1913 1914	15	19	15	37	14	9
1915 1916	3	15	25	16	9	1
1917 1918	3	38	84	59	12	16
1919 1920	10	31	82	39	10	28
1921 1922	14	26	32	34	9	20
1923 1924	9	37	35	25	7	36
1-1-25 to 11-1-25	1	4	9	15	9	8

Numerically, in recent years, pardons have played an unimportant role, as we shall point out in the text. This is borne out by Table I. A popular fallacy seems to be widespread in Missouri, that too many prisoners who are convicted of serious charges are pardoned. The table proves conclusively that there is no factual basis for this belief, for since 1918 the proportion of prisoners pardoned is practically negligible, never having exceeded two-tenths of one percent of all releases in any biennial period. The popular notions about the abuse of the executive power of clemency unquestionably have arisen from the granting of special commutations in cases of persons convicted on serious charges.

The second important mode of release during the first thirty-five years of the history of the Missouri Penitentiary was upon service of full sentence. Actually 32.98 percent of all releases in this period were of this type. The principal reason why this mode of release has become unpopular is because prison discipline becomes exceedingly difficult if a large number of prisoners have to serve full time and no methods are provided under which good conduct and efficient work may shorten incarceration. Unquestionably, however, the prison authorities of the Missouri Penitentiary have made a mistake in so completely abandoning service by the prisoner of the entire sentence, especially in dealing with repeaters or habitual and professional criminals.

A third mode of release is provided in the law which shortens the period of incarceration because of "good conduct" in the institution. This is intended to offset the disadvantages which attach to release upon expiration of sentence. The State of Missouri passed a "good time" law in 1871 which provided that convicts confined at the penitentiary at that time or thereafter who served three-fourths of the time for which they were sentenced in an orderly and peaceful manner without infraction of rules of the prison or laws of the State of Missouri, should be discharged after serving three-fourths of their original sentence in the same manner as if they had served full time. In such cases no pardon from the governor was required. This provision also, with certain slight modifications, has been retained and is effective even at the present time. Unfortunately this provision has applied to all offenders, irrespective of the number of previous commitments. This is a mistake as we shall point out below. In practice it was supplemented by the merit commutation plan in 1918 which was changed to a seven-twelfths rule in May, 1923. These changes were based upon administrative regulations, having no other legal basis than that conferred upon the governor in the constitution in regard to the commutation of sentence.

An examination of Table I reveals that practically four-fifths of all releases since 1870 have been under the three-fourths law and the administrative regulations referred to herein by which it has been supplemented.

A fourth mode of release that has been significant, especially in its application to persons who are serving long or severe sentences, is that of special commutation by the governor. The original provision for commutation by the governor was contained in the constitution in connection with the grant of the pardon power. A commutation by the governor results in a revision of the judgment of the court in regard to the punishment imposed. In practice it generally means a reduction of sentence. Such a reduction may mean that the sentence is abruptly ended, when the commutation provides for an immediate termination of sentence, or it may be provided that the commutation take effect at a later date, shortening the sentence by a specified amount of time. Further, the commutation may not affect the length of sentence, but it may modify the conditions of imprisonment by means of a transfer to the reformatory or to an asylum for the insane. There is really no difference between a commutation and a conditional pardon except the theory of a pardon is that it legally forgives the offender and restores his civil rights. This is not true of a commutation.[1]

A fifth means of release which has been developed since 1918 combines the principle of the good time law and the principle of the commutation. This is known as a merit commutation. A merit system was adopted on January 1, 1918, by the prison board, under which prisoners were able to reduce their sentence in addition to the one-fourth reduction provided under the three-fourths law. The minimum time in which a release became possible under this plan was seven-twelfths of the original sentence. Under this merit system inmates were classified and encouraged to shorten their incarceration progressively as they advanced from class to class. Merit cards were filed in the merit office showing the number of merits each prisoner had earned or lost.

Table I indicates that this mode of release became exceedingly popular. It virtually took the place of releases under the three-fourths law, and also of commutations by the governor. In 1923 the prison board modified the system of merit commutations and adopted what has become known as a seven-twelfths rule. The changes made are described below. Table I shows that practically all persons released from the penitentiary during the present administration are released under the seven-twelfths rule. They are released outright, absolutely and unconditionally. Men who enter the institution with a twelve year sentence are automatically and completely released from all control of the prison authorities upon serving seven years. The rule has applied, as is shown below, to all criminals irrespective of the crime for which they were committed or of how many times they have been committed to the Missouri Penitentiary or to other correctional institutions.

The sixth mode of release which has played a fairly important role in connection with the Missouri Penitentiary from 1909 to the beginning of the present administration is parole. A parole is a conditional release from the institution prior to the expiration of sentence. The parolee is not released from custody; he is not absolved from the penal consequences of his act. The judgment of the court is not altered as in the case of pardon. "The granting of a parole is merely permission to the prisoner to serve a portion of his sentence outside the walls of the prison. He continues to be in the custody of the authorities, both legally and actually, and is still under restraint. The sentence is in full force, and at any time when he does not comply with the conditions upon which he was released, or does not conduct himself properly, he may be returned, for his own good, and in the public interest." [1]

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[1] See Phelps case, 210 Mass. 611, Pardon is conceived as an absolute release from penalty, and commutation and conditional pardon are lesser exercises of clemency. "A commutation of sentence, which is the substitution of a lighter for a more severe punishment, is an exercise of pardoning power." Again—"The power of pardoning offenses includes that of mitigating the sentence, or by commutation, so that a milder punishment is inflicted." Kennedy's case, 135 Mass. 51.

This conception of parole needs to be modified somewhat when viewed from the standpoint of practice at the Missouri Penitentiary. The absence of a field officer carefully to supervise parolees handicaps the institutional authorities in their custody over parolees. In theory the offender is required to make regular reports to the prison authorities until the date of expiration of sentence. If he violates the conditions upon which he is released, his parole may be revoked and he may be returned to the institution. In practice, as will be shown later, many who violate the conditions of their parole are not returned because the institution does not have the machinery with which rigidly to enforce parole conditions.

In the pages that follow, these six important modes of release are considered. The reader who is interested in the other minor methods of release such as transfer, escape, death, action of the Supreme Court, etc., will find a summary of the number of persons thus released in Table I-A.

RELEASES BY PARDON

The Legal Basis of Pardon.

The legislation providing for pardon in the State of Missouri first appears in the Constitution of 1820. It provided [2] that the governor should have power to "remit fines and forfeitures, and except in cases of impeachment, to grant reprieves and pardons."

The Constitution of 1865,[3] authorized the governor "to grant reprieves, commutations and pardons, after conviction, for all offenses except treason and cases of impeachment, *upon such condition and with such restrictions and limitations as he may think proper.*" It was further provided that the governor should "at each session of the General Assembly, communicate to that body each case of reprieve, commutation, or pardon granted; stating the name of the convict, the crime of which he was convicted, the sentence and its date, the date of commutation, pardon, or reprieve, and the reasons for granting the same." The Constitution of 1875 incorporated practically the same provisions.[1]

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[1] Warren S. Spalding Am. Prison Ass'n. 1916, p. 464.
[2] Art. IV, Sec. 6.
[3] Art. V, Sec. 6.

The Legislature of 1901,[2] provided for the office of a Pardon Attorney to the Governor, to be appointed by the governor, by and with the consent of the senate. The purpose of the pardon attorney was to assist the governor in the examination of applications for pardons and in such other duties concerning applications for clemency, as might be prescribed by the governor. The office of the pardon attorney, however, was supplanted by the Legislature of 1914,[3] by the creation of a Board of Pardons and Paroles. In 1917 this board was supplanted by the Prison Board, one member of which acts as the Parole Officer. In 1923 a Department of Penal Institutions supplanted the Prison Board and took over its duties and powers as specified in the Prison Board Act of 1917.

The Decrease in the Number of Pardons.

Table I shows that while pardon was the most important method of release from the penitentiary up to the passage of the three-fourths law in 1871, since that date the proportion of releases by means of pardons gradually decreased. Nevertheless, they played an important, even though diminishing, role up to 1906. Since that date commutations, paroles, and releases upon serving seven-twelfths time, have supplanted pardons.

The gradual decrease in the number of pardons in Missouri corresponds to a similar decrease in the number pardoned in other states, particularly in the north and eastern portions of the United States. In the ten year period, 1840 to 1849, the average annual percent of those pardoned from the New Jersey prison was 22.4% of all discharges; from New Hampshire 43.4%; for Pennsylvania 22.11%; for Missouri 25.2%; for Michigan 24.6%. In the first decade of the present century these percentages had dwindled down to 0.6 for New Jersey; 7.6 for New Hampshire; 3.1 for Pennsylvania; 3.8 for Missouri and 3.5 for Michigan. This decline in pardons has not been universal, particularly in southern states. Thus, for instance, in 1920 the percentage of pardons among all releases from the State Prison of New Mexico was 17.5; for Mississippi, 28.0; for Florida, 25.3. These percentages stand in bold contrast with less than one percent in that year for New Jersey, Michigan, Colorado and Missouri.[4]

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[1] Art. V, Sec. 8.

[2] Laws Mo. 1901, p. 78.

[3] Laws Mo. 1913, p. 229, Sec. 12.

[4] Sutherland, Criminology, pp. 503-4.

Reasons for the Decline of Pardons.

The reason for this decline in the number of pardons is because it is now generally recognized that pardons are not so satisfactory, or desirable, as other forms of release that have been devised, particularly conditional releases by means of parole.

The principal objections to extensive pardoning are:

1. It tends to undermine the community's confidence in the administration of criminal justice, the popular notion of a pardon being that it is an act of mercy by means of which the individual's guilt has been wiped away and he has been declared innocent. But why should anybody's guilt be declared wiped away if he has committed grave crime?
2. It tends to undermine the morale of the prisoners in that they use their energies in seeking a pardon rather than in applying themselves to the task of winning meritorious recognition.
3. If pardons are granted too freely, courts and judges tend to become less responsible and inflict heavy penalties upon criminals whenever public opinion becomes inflamed in connection with criminal trials.
4. Releases by means of pardon have little, if any, real correctional value; they are final and outright. There is no supervision or aid provided for the person, and there is no control over the environment or circumstances into which he goes.

Value of Pardons.

There remains a limited need for the use of the pardoning power. It is possible for courts to make mistakes by convicting an innocent person or assessing too heavy a sentence, and there should be a method of rectifying such mistakes when they have been proven conclusively. But the granting of pardons should be restricted to the greatest possible extent.

In certain states in which no legal provision has been made for paroles, and in which sentences for certain crimes are excessive and institutional conditions are unfavorable for the proper treatment of first offenders, pardons may be useful. Experience, however, has proved that it is not the best method. Well administered paroles, properly supervised, are a far superior method of release, and have tended to supplant pardons, because they have greater reformative value.

RELEASE UPON EXPIRATION OF FULL SENTENCE

Up to the time of the passage of the three-fourths law in 1871, numerically the second most important mode of release from the institution was that which followed serving the full sentence (See Table I). In fact for the period from 1852 to 1864, inclusive, this was numerically the most important method of release. Even in the first 35 years of the history of the institution, one out of every three offenders was not liberated until he had served his full sentence.

There are difficulties in an extensive application of this kind of release. It tends to undermine prison discipline because one of the greatest incentives to efficient work and good behavior is the possibility of cutting down the period of incarceration under some qualified form of release. Nevertheless the State of Missouri has made a serious mistake in abandoning this method so completely, especially in case of criminals who have been convicted and committed to the institution several times. The table shows that the number of prisoners released upon serving full time since 1890 is practically negligible. In fact, during the first nine months of the year 1925, not a single person who was released from the penitentiary had served full time. In the biennial period 1923-24 only two persons served full time. In the previous biennial period only one, and in the biennial period 1917-18 none. The significance of these facts appears greater when we point out that one out of every three prisoners committed to the penitentiary is a repeater. (See Table XII.)

As a general rule, repeaters should be required to serve practically all of their sentences. A large number of repeaters are now required to serve their full sentence in other state penitentiaries. The Folsom Prison of California is used exclusively for repeaters and the statistics showing releases from that institution for the biennial period of 1923-24 reveal that 35.7 percent of all prisoners released served their full time. In other states in which there is an extensive application of the indeterminate sentence law, the practice is to require repeaters to approach, if not actually to serve, their maximum sentence in the institution. This is as it should be. The professional and hardened criminal can have very little fear of punishment when he knows that he will be discharged from the institution upon serving a little more than one-half of the sentence imposed upon him.

One of the principal reasons why so few prisoners have been required to serve full time has been because the three-fourths law arbitrarily made it necessary for the prison officials to release criminals (even repeaters) when three-fourths of their sentences had expired if they served this portion of their sentence "in an orderly and peaceable manner without infraction of prison rules."[1]

The Department of Penal Institutions should adopt a definite policy, similar to the one employed at the Folsom Prison of California with reference to repeaters. Many of them should be required to serve their full sentence. If any of them are released prior to the expiration of sentence, they should be released conditionally by means of parole, so that if they do not comply with parole conditions they can be returned to the institution. Such a policy would cut down recidivism in the State of Missouri very materially.

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[1] R. S. Mo. 1919, Sec. 12516.

Release Under the Three-Fourths Law

The facts conveyed in the above table show that the three-fourths time law played an important role in the release of prisoners from the Missouri Penitentiary immediately after it became effective. Even in the first biennial period after its enactment, in 1871, 57.5% of all releases were under the three-fourths law. The percentage of such releases increased steadily and it became by far the most important mode of discharge. An average percent of 78.3 of all releases from 1870 to date have been by means of the three-fourths law.

In recent years two other forms of release have had a decided effect upon this method: one is parole, the other is a release by means of merit commutation.

The movement to enact good time laws started in the United States as early as 1817 and spread quite rapidly. In 1868, twenty-four states had made provision for the reduction of sentences on the basis of good behavior. The motive back of the enactment of the good time laws grew largely out of administrative problems. First a reduction of sentence for good behavior and effort tended to place a premium upon good conduct and made prison discipline easier. Second, it became an incentive to increase effort and hence to increase prison production and prison profits. Third, it had a beneficial effect upon prisoners themselves.

Three important objections to good time laws should be stated: first, with the type of clerical help that prevails in the average penitentiary, they tend to become mechanical and a close check is not made upon the behavior and work record of the men. As a rule it merely means that if a man keeps out of trouble and is not lazy, he receives the benefit of the good time law. Second, there is a tendency to take advantage of the provisions of such laws in making room for constantly larger numbers of prisoners and the original purpose of the laws tends to be forgotten. Third, the three-fourths time law of Missouri, as suggested above, applied to all criminals entering the penitentiary no matter how many times they have been committed previously. Some differentiation is necessary between first offenders and repeaters in the application of this law. The latter should not receive outright releases under it. It would be desirable to modify the three-fourths law in regard to its application to repeaters. It should be specified in it that repeaters who serve three-fourths of their sentence meritoriously in the institution shall become eligible for making application for parole and if deemed desirable the prison board may release them conditionally on parole for the remainder of their sentence.

SPECIAL COMMUTATIONS

Special commutation by the governor has played a significant role, which has varied numerically according to the governor in power. It will be noted that prior to 1881 (See Table I), there is no record of commutation as such by the governor. Since that time, however, there have always been some commutations reported by the governor to each General Assembly. The number of special commutations, however, has fallen off appreciably since the development of parole in 1909 and especially since 1919, due, primarily, to the development of what is known as a merit commutation plan and later the seven-twelfths rule, under which practically all prisoners are now being released upon serving seven-twelfths of their sentence. From January 10, 1925, to January 10, 1926, only four special commutations have been granted.

Table II contains a summary of the effect upon the length of time served by those who obtained a special commutation in the years 1921 to 1924 inclusive. Eighty-five commutations that were granted in this period are included in the table.

A tabulation of charges for which offenders were committed who received the commutations listed in Table II (See Table VIII) shows that 41.86% were murder cases and 17.44% were convicted of robbery. These facts, however, tell only a part of the story of how special commutations take the teeth out of our criminal laws that were intended to punish criminals convicted of serious charges.

To make a reliable test of the effect of commutations upon severe and long sentences, the outcome of all severe sentences and of sentences of 25 years or more in length, imposed upon criminals committed to the Missouri Penitentiary in the five year period from 1905 to 1910, was studied and tabulated.[1] In this period 138 sentences of this character were imposed; 68 prisoners received sentences ranging from 25 to 60 years in length; 29 received 99 year sentences; 28 life sentences; and 13 were sentenced to be executed.

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[1] This time period was arbitrarily selected as a fair sample, sufficiently far removed from the present to give time in which the outcome of severe and long sentences might be determined. Still the period selected is near enough to the present acute crime conditions to make it reasonable to infer that the extensive mitigation and setting aside of sentences of this character may have helped to eliminate fear of punishment.

TABLE II

How Commutations Reduce Sentences

2	Death penalties were reduced to life sentences.		
8	Life	sentences reduced to an average of	11.5 years
3	99-year	“ “ “ “ “ “	12.7 “
3	40-year	“ “ “ “ “ “	10.4 “
1	38-year	“ “ “ “ “ “	6.3 “
1	30-year	“ “ “ “ “ “	6.5 “
1	29-year	“ “ “ “ “ “	15.0 “
6	25-year	“ “ “ “ “ “	9.8 “
7	20-year	“ “ “ “ “ “	9.3 “
1	17-year	“ “ “ “ “ “	4.4 “
6	15-year	“ “ “ “ “ “	6.1 “
2	12-year	“ “ “ “ “ “	4.8 “
13	10-year	“ “ “ “ “ “	4.8 “
1	8-year	“ “ “ “ “ “	6.0 “
5	7-year	“ “ “ “ “ “	3.7 “
2	6-year	“ “ “ “ “ “	3.7 “
8	5-year	“ “ “ “ “ “	1.9 “
2	4-year	“ “ “ “ “ “	1.5 “
1	2-year	“ “ “ “ “ “	1.0 “
2	Commutations reduced from penitentiary sentence to the reformatory.		

First, of the group of 68 whose original sentences ranged from 25 to 60 years in length—only two are still serving; 54 received commutations of sentences. The average length of their original sentences was 32.05 years—the average time served 8.75 years. In other words, their sentences were cut by commutation to one-fourth of the original sentence. As to the other 12 in this group, 3 were transferred to an asylum for the insane, the sentences of 2 were reversed and remanded by the Supreme Court, 1 was released from the institution to be executed on another charge, 5 died at the institution and 1 escaped.

Second, the sentences of 25 of the 29 prisoners who received 99 year sentences each were cut by means of commutation to 11.19 years of service in the institution, one-ninth of the original sentence. The other 4 in this group died at the institution. None of the 29 prisoners receiving a 99 year sentence are in the institution now.

Third, of the 28 receiving life sentences, 5 died at the institution, 4 were transferred to state hospitals for the insane, 3 are still serving time and records are incomplete as to the outcome of 1, *but* the life sentences of the other 15 prisoners were commuted to an average of 10.89 years.

Finally, in regard to the 13 who were sentenced to be executed, whose sentences were commuted to life imprisonment,[1] 1 was transferred to a state hospital and 4 died, but the sentences of the other 8 were commuted to an average of 10.44 years of service in the institution. Of the 13 originally sentenced to hang, not one was hanged, not one has had to serve a life sentence. In fact, not a single one is in the institution now. Before final conclusions are drawn, it should be noted that 80% of the 138 criminals included in this tabulation under discussion were convicted of *murder*.[1]

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[1] As above stated, this includes all those committed to the penitentiary for severe sentences of twenty-five years or more, including life and death penalties commuted to life sentences in the penitentiary. It does not include others who may have been sentenced to the death penalty who were executed in the counties where convicted.

These facts show the extent to which appropriate punishment, even for the gravest crimes conceivable, has disappeared in Missouri. Is it any wonder that we are about to be engulfed by a great crime tide? Is it any wonder that human life has become so cheap and insecure? In other sections of this survey it was discovered that it has become too difficult to convict criminals who destroy human life by murder. Of what avail is it to spend thousands and thousands of dollars to secure a conviction for murder if after you get such a conviction the sentence is so reduced that it becomes inadequate punishment?

The setting aside of severe punishment is, however, only one of the objections to special commutations. A second objection to the practice of granting special commutations so freely in the past is that not sufficient care has been taken to grant such releases to only first offenders. Obviously, there can be very little justification and the circumstances must be very rare and extraordinary for granting a commutation to a recidivist.

MERIT COMMUTATIONS AND THE SEVEN-TWELFTHS RULE

In order to increase the advantages provided under the three-fourths law, a merit system was adopted on January 1, 1918, by the Prison Board. Under it prisoners, by means of consistent efficient workmanship and meritorious behavior, were able to reduce the period of their confinement each year in addition to the one-fourth reduction provided for under the three-fourths law. Briefly, the merit system provided that prisoners should be classified in five groups. Upon entering the prison, all prisoners were to be placed in Class "C." Sixty days after entrance, prisoners became eligible for promotion from Class "C" to Class "B," which represented 85% efficiency; Class "C" represented 70% efficiency. Ninety days later, prisoners became eligible for promotion from Class "B" into Class "A," providing they had become 90% efficient in their work, deportment and cleanliness. The privileges that were granted in each of these classes were graduated. Prisoners in Class "B" received five days each month and prisoners in Class "A" received ten days each month in addition to the reduction under the three-fourths time law. The minimum time in which prisoners who remained consistently in Class "A" were able to obtain a merit commutation was seven-twelfths of their original sentence; Class "B" prisoners were released at the end of eight-twelfths of their sentences; Class "C" in nine-twelfths time; Class "D" in ten-twelfths time, and Class "E" prisoners were required to serve full time. Demotions were provided for according to a definite scale from any class, the lowest groups, however, being Class "D" and class "E."

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[1] In order that the reader may not be misled by the fact that the above summary shows that 18 of this group of 138 died in the institution, it should be noted that the average age at death for this group was 34.2 years and they had served on the average only 5.8 years at the time of their death.

The motives in adopting the merit plan were, of course, similar to the motives that were back of the three-fourths law, excepting that the merit plan provided a splendid method of grading and rewarding prisoners. It also provided for a limited amount of self-government, being administered by inmates. When carefully applied, it stimulated prisoners to do their best because it appealed definitely to their pride. Thus it served to maintain discipline, to promote greater industry and it tended to build up attitudes and habits that would help prisoners to live useful lives when released. However, due to changes in administration, the merit system was modified in May, 1923. It was provided that upon entering prison all prisoners were to receive a reduction of their sentence to seven-twelfths time, subject to good behavior in the institution. A definite scale of demerits in the form of loss of time for infraction of prison rules and for misbehavior was applied. Thus, in place of the merit system, by an administrative regulation, a seven-twelfths rule plus a demerit system was adopted. Under it practically all prisoners have been released upon serving seven-twelfths of their time. Those guilty of infraction of prison rules lost a part of their "good time," but such loss has frequently been only temporary. It is unfortunate that the original merit system has not been kept intact, subject to certain modifications; it would have been desirable to use it as a prerequisite to eligibility for parole in case of first offenders.

The first objection to the method in which the merit system and the seven-twelfths rule have been applied is that no differentiation has been made between first offenders and recidivists. Many recidivists have been able to obtain releases under this rule on serving seven-twelfths time. The seriousness of this practice will be discussed later in the discussion of recidivism. A second objection to such releases, irrespective as to whether they are given to a first offender or a repeater, is that they are final and unconditional. An offender may commit a new crime immediately upon release but he does not forfeit "his good time" and he cannot be returned to the institution to serve the remainder of his sentence. Return is possible only by means of a new and expensive conviction. A third objection to these releases is that no aid or supervision accompanies them. The individual receives no help or encouragement or direction in the difficult adjustment which he has to make in working his way back to honor and usefulness. Frequently he is a penniless, friendless, jobless, homeless outcast, with all of the odds against him. Liberty under such circumstances means failure, new crimes and further imprisonment.

The solution to this problem is a well organized parole service that will guard over and aid the friendless and penniless convict until he gets on his feet. Experience extending over two decades in other states has demonstrated that money spent for such work by the state, greatly cuts down criminal costs because it tends to prevent a relapse into crime and new criminal trials.

PAROLE

Parole has never played as important a role at the Missouri Penitentiary as it has in most other state penitentiaries in the United States. The average percent paroled among all other releases since 1909 is 15%. This is a comparatively low percentage, especially when compared with the parole releases of other states. This is clearly shown by the data submitted in Table III.

TABLE III

PERCENTAGES OF RELEASE FROM STATE PENITENTIARIES THAT WERE PAROLES

State and Institution	Time Period	Percent Paroled
1. Sing Sing Prison, New York	1923—1924	87.53
2. New Hampshire State Prison	1923—1924	80.85
3. Nebraska State Penitentiary	1922—1923	61.14
4. New Mexico State Prison	1923—1924	53.40
5. Connecticut State Prison	1902—1924	50.26
6. Indiana State Prison	1897—1925	48.00
7. Massachusetts State Prison		42.53
8. Minnesota State Prison	1911—1924	40.65
9. Eastern State Penitentiary	1910—1925	39.05
10. Folsom (Recidivist), California	1923—1924	35.70
11. Utah State Prison	1922—1923	29.95
12. Wisconsin State Prison	1907—1924	22.34
13. Missouri Penitentiary	1923—1924	7.57

An examination of Table I shows that the number and percentage of prisoners paroled from the Missouri Penitentiary has dropped off steadily during the last ten years. Under the present administration parole has virtually been abandoned as a method of release. The percentages of release that have been paroles for biennial periods since January 1, 1915, have been 30.60%; 20.84%; 15.88%; 12.12%; 7.57%. During the first year of the present administration only 12 paroles were granted. Viewing this situation from the standpoint of the real significance of paroles which is aid to and supervision and control of persons released until their sentences have expired, these facts mean that the institution has progressively cut down on its work for released prisoners, in the face of an increasing crime wave. In fact the present administration releases outright 140 prisoners for every one who is paroled. These 140 receive final and absolute discharges from their sentences, go out without aid or supervision or control on serving seven-twelfths of their sentence.

Metropolitan newspapers have commented favorably upon the policy of the present administration of not undoing the work of the courts by means of granting paroles. Such comment does not take into consideration the whole situation. It ignores the fact that virtually all criminals, actually nine out of ten, are now being released upon seven-twelfths time by means of a method of release that has no reformatory value in many cases since the institution relinquishes and forfeits all of its control over the individual at the time he leaves the institution.

Treatment vs. Clemency.

In the states that have been most successful in dealing with prisoners by means of paroles, parole is viewed as a form of correctional treatment under controlled conditions. It is recognized, that especially for first offenders who are in the formative period of life, conditions can be made more favorable for reform by means of parole under the supervision of adequately trained and experienced parole officers than is possible in an institution, particularly a penitentiary.

In the state of Missouri paroles have been viewed chiefly as acts of executive clemency. The law provides that paroles at the penitentiary are to be granted by the governor. The act under which the Board of Pardons and Paroles was created in 1913 specified that it was to "investigate fully the merits of all applications for executive clemency."[1] From an administrative standpoint no provision has been made in the form of appropriations for an adequate staff of parole officers to make treatment of persons on parole a possibility. This is true despite the efforts of the former parole commissioner, Mr. Pool, who urged the General Assembly to appropriate funds for the development of an adequate parole work. Further, public opinion also tends to view paroles as acts of mercy. Until public opinion is changed parole work in Missouri will remain so inadequately supported that it will in practice amount to nothing more than an act of mercy. It will never reach the level of effective treatment.

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[1] Laws Mo. 1913, p. 227, Sec. 3.

If the present crime problem is to be faced intelligently and effectively, practically all releases from the penitentiary should be made paroles so that the institution might aid and supervise offenders and keep its control over them up to the expiration of their sentence.

In this study of penitentiary paroles, a case analysis was undertaken of all paroles granted in the period 1921 to 1924. All available records on 384 approved paroles were examined. A study was also made of a fair sample of the paroles granted in 1919 and 1920; and of paroles granted in 1915. There was no interest in personalities connected with the administration of parole systems, the object being to study methods and results in administering paroles in different periods. The paroles granted in 1915 were under the administration of the first parole board established in Missouri. Only the last 112 paroles granted in the administration closing in 1920 were selected. No attempt was made to include all of the paroles of that administration because conditions during and immediately after the war were so abnormal that it became customary in all institutions to release a large number of prisoners by means of commutation, pardon and parole. However, as previously stated, a fair sample was studied to compare the parole methods and the results of that period with the other periods examined. For the period 1921 to 1924 it was deemed desirable to cover a reasonable number of unapproved cases to determine the difference between cases approved and unapproved. A total of 167 cases were critically analyzed, tabulated and summarized.

The object of this study of the parole system has been to clear up certain conflicting reports regarding paroles from the penitentiary that tend to undermine public confidence in the administration of criminal justice.

The first task in studying the operation of the parole system was to note the reasons why men were paroled. Table IV contains a summary of the reasons mentioned in the applications that accompanied the parole papers on file in the office of the Secretary of State. It was impossible to determine in all cases what might have been the major reasons. The role played by the eloquence of persons who made oral representations before the board and the effect of their conferences with members of the board, the governor or others who were influential could not be determined from a study of the records. The record contained in Table IV indicates that in the brief that is presented to the governor, the attitude of the trial officials is featured more frequently than any other attitude or argument. Second to this argument, the argument of a good prison record is advanced. Third, the length of time served. Fourth, previous good reputation. Fifth, the youth of the prisoner. Sixth, the health of the prisoner. Seventh, the need of the prisoner at home.

TABLE IV

Reasons for Paroles

	Total	1915	1920	1921–1924
Prosecuting officials recommend or do not object	591	224	87	280
Good prison record	396	22	94	280
Time served	393	18	98	277
Previous good reputation	341	11	79	251
Youth of prisoner	100	8	15	77
Poor health	61	3	7	51
Needed at home	17	1		16
Innocent of crime	10		1	9
Mentally deficient	2		1	1
Sentence too severe	1		1	
Recommended by a number of good citizens	42	42		
Recommended by county officers	2	2		
Recommended by jury	2	2		
None of record	9		4	5

These are the reasons that occur most often, excepting one other, which is that a large number of good citizens recommend the parole.

Table V gives a comparison of the length of sentence and of the length of time served. It will be noted that the persons paroled in 1915 received an average sentence of 5.85 years. In contrast they served only 2.4 years. If we use the modal average to offset the extremes we find the modal average length of sentences for the prisoners paroled in this period to be two years, and the modal average length of time served by them to be one year.

TABLE V

Time Served

	Arithmetic average		Modal average		
	Length of Sent. in years	Time served in years	Length of Sent. in years	Time served in years	
1915	5.85	2.40	2	1	Omitted 9 life sentences from calculations
1920	5.57	1.96	2	1	Omitted 3 life sentences from calculations
1921–1924	7.85	2.69	2.5	1	Omitted 25 life sentences from calculations

	Arithmetic Averages	
	Number paroled	Time served in years
1915	9	10.16
1920	3	6.50
1921–1924	25	10.57

In comparison with this the sentences in the cases for 1919 and 1920 here included were somewhat shorter, the average length of sentences bing 5.5 and the average length of time served 1.9. For the period 1921 to 1924 we note that quite a different type of sentence received a parole, the average length of sentence being 7.85 or two years more than in 1915, the average time served being only a little more than in 1915, 2.6 years, the average modal length of time served being one year. In this table life sentences have not been included. They are treated separately, and we notice that the 9 persons who were paroled in 1915 who had received life sentences served an average sentence of 10.1 years. The 25 prisoners whose life sentences were shortened by parole in the last previous administration served an average sentence of only 10.5 years.

TABLE VI

UNAPPROVED PAROLES

Average time served before applying for parole		
Average length of sentence, in years	Average time served before application, in years	
10.44	1.74	Omitted 12 life sentences from calculations

LIFE SENTENCES

Number applying for parole	Average time served before application, in years	
12	5.41	Unable to compute time on 5 of these cases

Table VI contains information regarding the length of sentence and time served by the applicants of the unapproved paroles. It will be noted that the average length of sentence in this instance is 10.4 years, and the average length of time served at the time of hearing of application was 1.7. The average length of time served by 12 persons who were serving life sentences and whose applications for paroles were refused was only 5.4 years at the time when the application was made.

TABLE VII

Approved and Unapproved Applications for Parole Distributed by Percentages Among Principal Crimes upon which Inmates were Convicted

1921–1924

	Approved % of whole	Unapproved % of whole
Murder, 1st	6.04	5.99
Murder, 2nd	13.41	10.18
Manslaughter	.52	.60
Rape	4.47	9.58
Assault to kill	2.63	1.80
Burglaries	3.68	2.40
Burg. and larceny	11.57	11.38
Robberies	19.98	28.74
Grand larceny	13.67	8.38
Forgery	7.89	2.39
Total	83.86	81.44

The gravity of sentence of those whose applications were refused is shown by the facts contained in Table VII. It will be noted that only 4.4% of the total persons paroled in 1921 to 1924 were serving sentences for rape in marked contrast with 9.5% of the unapproved group. In like manner, 19.9% of the approved group were confined because of robberies in contrast with 28.7% in the unapproved group.

Table VIII gives information in regard to the charges for which persons were convicted who received paroles or commutations. This table shows very clearly that invariably the most serious charges scored the highest percentage. In fact, every charge in the table is a serious one, and this means that the persons applying for parole represent a selected group, a group convicted largely for such crimes as murder, burglary, robbery, grand larceny and forgery. It is very questionable whether it is desirable to operate a system of parole or commutations under which persons convicted on these charges are permitted to walk out of the penitentiary long before their sentences have expired.

TABLE VIII

Paroles and Commutations Distributed by Percentages Among Principal Crimes for which Inmates were Convicted

Charge	Paroles 1919–20	Paroles 1921–24	Paroles 1915	Comm. 1919–20	Comm. 1921–24	Comm. 1915
Murder, 1st deg.	3.57	6.04	1.35		20.93	
Murder, 2nd deg.	13.39	13.41	14.57		20.93	
Att. murder			.33			
Manslaughter	3.57	.52	2.71			
Mayhem			.67			
Rape	.89	4.47	1.35		6.97	
Assault to kill	1.78	2.63	2.71		2.32	
Burglaries	9.82	3.68	13.55		2.32	28.57
Burg. and larceny	9.82	11.57	5.08		12.79	14.28
Robberies	12.49	19.98	9.15	50.00	17.44	
Grand larceny	21.42	13.67	14.23	50.00	1.16	14.28
Forgeries	9.82	7.89	13.89		3.48	14.28
% of total cases	86.57	83.86	79.59	100.00	88.34	71.41
No. of cases included	97	318	234	2	68	5
Total no. cases	112	384	295	2	86	7

Table IX shows that by far the largest number of prisoners who apply for parole are in the age group of from 17 to 24, the percentage in the approved group being larger than in the unapproved group. The table moreover, shows that most of the paroles concentrate in the lower age group.

TABLE IX

PERCENTAGE DISTRIBUTION OF APPROVED AND UNAPPROVED APPLICATIONS FOR PAROLE BY AGE[1] GROUP OF INMATES APPLYING

	Approved Paroles			Unapproved Paroles
	1915	1920	1921–24	1921–24
17 and under, to 24	43.38	43.75	42.70	47.90
25-29	20.67	24.11	20.57	16.77
30-34	13.56	8.93	12.50	11.38
35-39	8.14	6.25	9.63	7.19
40-44	5.08	6.25	3.65	5.99
45-49	2.04	2.68	3.91	2.40
50-54	2.04	1.79	3.12	1.79
55-59	2.04	.89	1.05	1.79
60-64	.68			1.20
65-69			.26	
70-74			1.05	
75-79		.89		
No record	2.37	4.46	1.56	3.59
Total	100.00	100.00	100.00	100.00

Four differences, therefore, appear between the unapproved applications for parole and the approved ones.

1. Less pressure was brought to bear from outside the institution in the unapproved cases, and a smaller percentage of them were handled by attorneys.
2. The average length of sentence for the unapproved applications for paroles was longer than for the approved applications; and the time served in the institution at the time when application was made for parole was shorter.
3. The unapproved applicants had been convicted of more serious crimes.
4. A larger percentage of the unapproved group were between 17 and 24 years of age than in the approved group.

Outside Influences Play Too Great a Role.

An examination of Table IV as well as Table X indicates that factors and influences entirely outside of the institution have played a very decisive role in determining the granting of paroles. This is brought out to an even greater extent by an intensive study of all of the papers connected with the applications for paroles covered in this study. These papers lead one to the conclusion that in many cases the information obtained from a study of the prisoner by the prison authorities played a far less important role in determining who was to be paroled than some of the influences outside of the institution, which in many instances should not have been permitted to have any bearing upon a given parole.

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[1] Age at conviction.

Since the penitentiary has not had a staff of field parole officers, the prison officials have had no effective means of verifying oral and written representations made by outsiders who have sought to obtain paroles for their friends or relatives. That such representations tend to be biased is but natural. Our investigations show that frequently representations are made by outsiders who have no first hand information or knowledge regarding the inmates for whose parole they plead. In fact an inquiry directed to more than 400 sponsors of parolees revealed that frequently they did not know personally the person for whom they became sponsors at the time when they assumed that important responsibility. In many instances, outsiders act as officials of prominent social, civic or political organizations because an attorney or friend who handled the application for parole has requested them to assist him in his efforts to obtain a parole for his client or friend. That generally these efforts have been made in good faith is not questioned, and that mistakes made in misplacing trust in an inmate unworthy for parole, were generally honest mistakes is also not questioned. Pressure from outsiders has played a greater role in the granting of paroles than is desirable.

The prison board in the past has adopted a majority rule in voting on applications for parole. A majority vote, that is three out of five, has been required to determine the action of the board. Such a majority vote has been considered an unanimous vote. This regulation has made it comparatively easy for outsiders to gain greater effectiveness than is desirable. Many states forbid the representation of outsiders either by law or administrative regulation, and parole authorities base their action upon the merits of the case as disclosed by a careful study of all the facts that should be permitted to have a bearing on the parole. This is possible of course only when an adequate parole force is provided.

Trial Officials and Paroles.

Our facts indicate that the parole authorities in the past have given a great deal of attention to the attitude of trial officials toward applications for paroles. They have sought a statement of facts from judges and prosecuting attorneys, and any recommendation that they cared to make in the case. Trial officials should be in a position to give valuable information regarding certain facts surrounding the cases of prisoners who come up for parole, but such information, as we have indicated below, should be submitted at the time when the individual is committed to the institution.

Approval of trial officials, however, of many applications for parole has not been necessary in the past. In fact, there are some instances in which trial officials have refused to take a position in regard to a given application for parole. An examination of the table will show that in nearly half of the cases either the trial judge or the prosecuting attorney did not commit himself either for or against a given application. In fact, there are some instances in which they have disapproved of a parole under consideration, yet that parole was granted in spite of their protest or disapproval.

TABLE X

INFLUENCES AFFECTING ACTION IN PAROLE CASES

Judge	Opposed	Recommend	Stated Facts	No Indication
1915		162		133
1920	1	72	14	25
1921–24	2	200	67	115
	3	434	81	273
Pros. Atty.				
1915		172		123
1920	2	76	12	22
1921–24	14	220	59	91
	16	468	71	236
Victims	Opposed	Recommend		No Indication
1915		43		252
1920	2	11		99
1921–24	11	46		327
	13	100		678

Members of Community	Opposed	Filed Petitions For	Both Opposed and Urged	No Indication
1915		81		214
1920		35		77
1921–24	4	133	5	242
	4	249	5	533
Jury	Opposed	Recommend		No Indication
1915		22		273
1920		4		108
1921–24	1	27		356
	1	53		737

Attorney	Handled Case	
	Yes	No.
1915		
1920	36	76
1921–24	95	289
	131	365
Political	Yes	No
1915	17	278
1920	19	93
1921–24	101	283
	137	654

The following cases are illustrations of what has often happened:

CASE I.

Charge: Murder 1st degree.
Age:
Convicted: Life sentence. Served 3 years, 9 months.
12-10-21 Prosecuting attorney requests to be heard before board to oppose parole.
12-15-21 Prosecuting attorney writes protesting parole saying that defendant is a bad character.
1-22-22 Trial judge writes that he has no recommendations to make concerning parole.
2- 2-22 ————, attorney who had dropped out of case, feels defendant should not have been so severely punished.
2- 6-22 ————who conducted prosecution recommends parole.
2-15-22 *Ten of the jurors protest parole.*

This parole seems to have been granted in the face of strong protests, without recommendations of trial officials. In fact, facts submitted by arresting officer show that the murder was a "cold-blooded" one.

CASE II.

Charge: Rob. 1st deg., Burg. and Larc., 3 charges.
Age: 19
Convicted: 11-2-21, 5 years. Served 1 year, 8 months.
Paroled: 6-26-23. Had a record of 1 previous term in Missouri Reformatory.
9-30-22 Prosecuting attorney writes: "Another time he was taken out in yard to water and wash and he hurried back into jail ahead of jailer. When jailer returned he found———— had dodged behind the door hiding with a bar in his hands. They searched his bunk and bedding and found hidden therein a heavy gas pipe about 2 feet long. While incarcerated here he was regarded as a dangerous and desperate man. I do not care to recommend a pardon or parole at this time."
1-29-23 Judge writes and after recommending a parole says, "The fact that he robbed a poker game, may appear less offensive than if it had been a different kind of robbery as that game itself is supposed to be a species of robbery."
2- 2-23 Prosecuting attorney writes: "It is urged upon me to recommend parole of————. I do not now recommend his parole nor do I urge its disapproval."

One year after release the parole was revoked for the reason that parolee was under arrest charged with resisting arrest and flourishing a deadly weapon in a rude, angry and threatening manner.

CASE III.

Charge: Larceny.
Age: 36
Convicted: 5-3-20, 5 years. Served 1 year, 7 months.
Paroled: 12-3-21.
Judge writes: Applicant was sent to prison on plea of guilty on charge of burglary and larceny from the store building of————Co., family

is in helpless condition, clemency recommended on these grounds. Inquires reason for request in *this* case when *so many paroles have been granted in circuit without even a statement of facts from the judge or prosecutor.* Above letter countersigned by prosecutor.

An examination of the nature of the statement submitted by trial officials in many cases shows that there might be just grounds in certain instances why the parole authorities should not take their recommendation too seriously. In fact one must be astonished at the carelessness that is expressed in the attitude of many trial officials in submitting a statement in regard to the prisoner whose application is under consideration. In many instances they are not only indifferent as to whether the parole is to be given, but actually fail to put forth an effort to familiarize themselves with the facts that are really necessary in order to give an intelligent statement either for or against the parole.

Cases IV, V and VI are quite typical of the point in question.

CASE IV.

Charge: Robbery, 1st deg.
Age: 28.
Convicted: 4-18-21, 5 years. Served 1 year, 7 months.
Paroled: 11-23-22.

Trial judge stated that he could not remember the facts but that he would not oppose a parole for the man. Prosecuting attorney stated that he sympathized with the family of the prisoner, but that he could not recommend a parole for the prisoner.

CASE V.

Charge: Attempted rape.
Age: 29.
Convicted: 5-7-21, 5 years. Served 8 months. Received at Pen. 3-11-24.
Paroled: 11-17-24.

Judge does not recall evidence in detail but would not object to parole if evidence was, as applicant declared, false.

Prosecuting attorney says that he would not sign a parole or make a statement of facts for anyone or to anyone. Petition of 7 pages signed by citizens of ——— recommending parole.

Reporting regularly.

Note: Reasons for application for parole; his father is getting old, he is a good veterinary and there is no other veterinary in the county.

CASE VI.

Charge: Embezzlement.
Age: 33.
Convicted: 5-17-20, 2 years. Served 7 months.
Paroled: 7-13 or 15-22.

1-19-22 Trial judge stated: "If you feel that the 6 weeks time which applicant has served in penitentiary, has corrected him or changed his views with respect to the rights of others, you are at liberty without protest on my part to grant such clemency as you believe him entitled to."

Prosecuting attorney states that defendant was charged with larceny of street car fares while acting as conductor, appealed to the Supreme Court and sentence was affirmed. On 7-26-21 recommends parole, account good prisoner.

Released from parole 8-20-22.

Carelessness of Trial Officials at the Trial.

In many instances, trial officials have been unreasonable in permitting a heavy sentence to be given to a prisoner in comparison with sentences received by other prisoners from other counties, or even from the same county, for the same offense. It is true that there are instances in which the public conscience becomes enraged and public sentiment demands not merely conviction but a heavy sentence. But there are, however, other instances in which more than this situation is required to answer the question why the trial officials have inflicted such an exceedingly heavy sentence upon an individual. In fact, parole authorities have said that one of the reasons why many paroles are given to prisoners from certain counties is because the judges from those counties make it a practice to inflict heavy sentences and a short time later they recommend a parole.[1] Thus they get public approval for severity and private approval from the friends and attorneys of the defendant for leniency. Such action may give to the judge certain advantages, but its effect upon the administration of criminal justice is exceedingly unfortunate.

Case VII is a good illustration of some of the problems with which prison authorities are confronted. It is obvious that the prosecuting attorney in this instance, as well as the judge, should not have permitted an 18 year sentence to be inflicted upon the criminal covered by Case VII.

CASE VII.

Charge: Carnal knowledge of female under 15 years.
Age: 27.
Convicted: 8-23-19, 18 years. Served 3 years, 4 months.
Paroled: 12-19-22.
6-20-21 Judge and prosecuting attorney write a joint letter. "The defendant was not represented by counsel at the time, and there being no trial the facts in the case were not developed. I am reliably informed that at the time charged in the information the defendant was under the influence of intoxicating liquor and that the act was incomplete. The serious injury and results usually suffered by the prosecuting witness were not present as I am reliably informed." They go on by stating that his parents are old and badly in need of his support. They recommend a parole. The letter is written by the judge and endorsed by prosecuting attorney.

Case VIII is another good illustration of an excessive sentence on the one hand and leniency on the other hand on the part of the prison authorities.

CASE VIII.

Charge: Rape.
Age: 39.
Convicted: 11-11-21, 25 years. Served 3 years, 1 month. Received at Pen. 11-29-21.
Paroled: 1-9-25.
11-14-24 Judge writes: "prosecutrix was 14 years old daughter of woman with whom applicant lived in common law marriage, evidence as to guilt of applicant was simply testimony of prosecutrix and her young brother age eleven." Recommends that applicant serve more substantial part of the sentence before being paroled.

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[1] Table X shows that frequently the juries indulge in the same practice. There are many cases on file in which a part or all of the members of the trial jury shortly after having meted out a heavy penalty permit their influences as jurymen to play its role in an appeal for a parole.

CASE IX.

Charge: Murder 1st deg.
Age: 28.
Convicted: 11-7-15, 30 years. Served 5 years, 9 months. Committed 12-31-15.
Paroled: 9-9-21.

9-13-19 Prosecuting attorney writes: "Evidence showed that one——— was intimate with prisoner's wife. Prisoner found———— and wife were having illicit relations, which so inflamed him that he shot them both. I am convinced that there was not a man in the entire courtroom that would not have done what he did. It was proven that the prisoner was always true to his wife. I recommend that he be paroled at once."

2-16-20 Judge writes: "The unwritten law would have freed most in this case. I recommend that he be paroled if prison record is good."

2-18-19 Attorney writes: "It became my unpleasant duty to defend the prisoner on a charge of murder for which he was convicted. The circumstances were such as would have resulted in a verdict of not guilty if the prisoner had been an American born citizen. There was high feeling against foreign born at that time. He is an honest and hard working man."

No record of reports.

CASE X.

Charge: Robbery 1st deg.
Age: 20, Colored.
Convicted: 10-12-12, 20 years. Served 10 years, 2 months. Committed 10-22-12.
Paroled: 12-21-22. Served term in Kansas Penitentiary and one term in State Reformatory.

10-21-22 Judge writes: "Was charged with stealing $13 from————. Having been in penitentiary for over 10 years which is a long time in which to expiate his offense, and if prison record is good, I shall cheerfully concur in recommending his parole."

8-10-22 Assistant prosecuting attorney writes: "Testimony was meager. I did not prosecute the case personally, but remember, before the prisoner was tried, the state did not think it had a strong case against him. However, the jury sentenced him to 20 years. I believe under the circumstances that he is entitled to clemency at the hands of your board."

12-11-19 Board writes one———— who was instrumental in getting parole: "Until this prisoner gets in Class 'A' and shows a disposition to stay there, we do not feel justified in recommending his parole."

Prison Record: "A" class 1-1-19; "D" class 5-1-19; "B" class 9-1-19; "C" class 10-1-19; yet, one of the reasons for paroling this man was that he was a *good prisoner.*

CASE XI.

Charge: Grand Larceny.
Age: 23.
Convicted: 3-14-21, 10 years. Served 1 year.
Paroled: 3-29-22. Paid fine $10.50 for disturbing the peace.

10- 1-21 Judge and prosecuting attorney write a joint statement to the board and state that with the exception of a fine of $1.00 and costs for disturbing the peace, she had never before been in trouble. Further state that she stole some goods to the value of $50.00 most of which was returned to the owner. She entered a plea of guilty without having legal advice of any kind. They say that she comes from a highly respected colored family and that people still have faith in her and think she will make good if released. They both recommend and urge the parole. Released from parole 4-30-23.

CASE XII.

Charge: Felonious assault.
Age: 54 years.
Convicted: 9-7-21, 5 years. Served 1 year, 9 months.
Paroled: 6-16-23.

2- 6-23 Prosecuting attorney writes: "Believing———— has received enough punishment, I hereby cheerfully recommend his parole."

12-30-22 Judge writes: Recommends that the time be reduced to 2 years.

CASE XIII.

Charge: Robbery 1st deg.
Age: 19.
Convicted: 8-25-19, 8 years. Served 3 years, 3 months. Received at penitentiary 9-12-19.
Paroled: 11-27-22.
Judge writes: "I promised the mother of the prisoner that I would recommend a parole after the boy had served a year of his sentence," and that he does so recommend a parole on account of the boy's age and his previous good character.
Prosecuting attorney—Just stated that he would not interpose any objection to the boy being paroled since the judge had recommended one.

Victim's Attitude Deserves Little Consideration.

The records show that in a great many instances those who try to obtain a parole for their friends or relatives use the influence of those who at the time when the crime was committed were victims and became prosecuting witnesses in the trial.

Table X shows that in some instances the victims and prosecuting witnesses will recommend paroles and the case studies that we have made indicate that sometimes these recommendations come shortly after conviction has taken place.

Case XIV shows that in some instances the motives of victims in becoming interested in securing paroles are not worthy.

CASE XIV.

Charge: Murder 2nd deg.
Age: 44.
Convicted: 6-5-19, 10 years. Served 2 years, 11 months.
Paroled: 6-16-22.
11- 5-21 Judge writes—recommends parole.
11- 3-21 Assistant prosecuting attorney writes: "I understand that judge who tried the case, 11 jurors who sat in the case, and prosecuting attorney of——— are recommending——— parole, and I desire to join in this recommendation.
6-27-21 Judge gives the board a statement of facts: It seems that this woman, the defendant, first married a man named———. After his death she lived with——— as his common law wife. They lived on a ranch in Nebraska and both contributed a substantial amount. They separated and divided their property and the man——— came to Missouri and married a 22 year old girl. The defendant says he was supposed to send for her. The defendant made two trips to the——— home in Missouri and during the second visit, when she disclosed the fact that she was the wife of———, there was a fight between the two, and the second Mrs.——— was killed. At the trial the defendant gave a very confused statement of the facts. It appears also that——— had raped the daughter of the defendant and that had been one of the causes of their separation in Nebraska. There is also some evidence that——— coerced the defendant to kill his second wife.
The mother of the slain woman writes one letter to one of the defense lawyers and strongly urges a parole saying that she believes this woman is shielding——— (the husband). A few weeks later she writes the board and enters a vigorous protest to having any clemency shown——— (the defendant). She says she has changed her mind about Mrs.——— being innocent.
6-10-21 Father of girl who was killed writes a letter to the daughter of the defendant. This man outlines the things he will swear to as extenuating circumstances connected with the murder, and believes his statement will get a parole for the defendant. He then adds "*I am willing to aid you for a pardon for her. I have accepted any terms you seemed willing to pay that are reasonable. But you change so often. You stated that you would gladly pay $250.00 not long ago. Now you state $100.00. But I'll split with you for $150.00 in advance.*"

This is, of course, a singular case, but there are many other cases of which cases No. XV and XVI are typical, which lead one to the conclusion that the recommendations of victims or of prosecuting witnesses should not be permitted to have much weight when it comes to determining whether an individual deserves a parole or not.

CASE XV.

Charge: Rape.
Age: 41.
Convicted: September Term, 1917. Life. Served 5 years. Committed September, 1917.
Paroled: 9-29-22.

Prosecuting attorney writes that he had received complaints that the prisoner, the father of the girl had been having illicit relations with her. Called her before him and she admitted it. Father was arrested and pleaded guilty. Some doubt in his mind as to guilt of father. Thinks that girl is letting father suffer in order to protect herself. States that she is seemingly that kind of a girl. Recommends parole.

Judge writes and endorses prosecuting attorney's statement and recommends parole.

Attorney of——— writes that the majority of people of the county believe that the man is innocent. County clerk of——— writes that prisoner's children need him—believes he is innocent of charge. Prisoner's daughter writes "That he did not commit the crime—that she was mad at him at the time."

CASE XVI.

Charge: Murder 2nd deg.
Age: 47.
Convicted: 5-11-14. 20 years. Served 8 years, 2 months. Committed 5-11-14.
Paroled: 7-12-22.

7-19-20 Judge writes: "Recommend parole, because his daughter, upon whose evidence he was convicted now repudiates her testimony."

2-14-16 Prosecuting attorney writes—Prisoner was guilty of murder of his own son because the boy knew he was guilty of raping his own daughter,—the son threatened to reveal it—he strongly *opposes* a parole.

2-20-20 Prosecuting attorney writes: "That enough doubt has entered his mind as to the guilt of the accused to cause him to recommend his parole." An affidavit filed sworn to by prosecuting witness repudiating her former testimony—says that her older sister made her testify as she did—was only 11 years of age at time. The probate judge, county clerk, circuit clerk, county treasurer of county all write asking for parole for prisoner.

Sickness and Paroles.

An examination of the paroles that are included in Table I indicates that every year a large number of paroles are given on the basis of ill health. Ill health may merit consideration, particularly when the prisoner's illness is such that incarceration will greatly increase the hazards of life. In many instances, however, the question may well be raised as to whether the facilities of the institution should not be modified so that certain types of illness could be treated just as successfully in the institution as outside.

Case XVII gives us an example of this problem:

CASE XVII.

Charge: Murder 1st deg.
Age:
Convicted: 8-14-09. Life. Served 13 years, 3 months.
Paroled: 11-21-22.

Previous criminal record—Convicted of stealing a horse and paroled.

Prosecuting attorney writes: That the prisoner went into the cellar of the deceased and brutally killed him with a blunt instrument. No reason was stated for the crime. At the time the prisoner was out on parole for stealing a horse. At the time of the murder the prisoner stole a team of horses. Prosecuting attorney thinks that he should *never* be paroled. Sick parole—tuberculosis.

Some releases are given upon the basis of alleged or actual tuberculosis. The facilities of the institution are utterly inadequate to treat this disease. The present ward will accommodate only thirty patients in spite of the fact that there are constantly in the neighborhood of from seventy to ninety patients who are suffering from this disease and who should be isolated. A new modern pavilion should be provided which will accommodate those who are suffering from this disease so that in the future they can be treated at the institution.

Dependency of Innocent Ones as a Reason for Parole.

Another factor that plays a very considerable role in the granting of certain paroles is that there are dependent ones at home who are in need of the assistance and support of the prisoner.

Cases XVIII and XIX are typical cases:

CASE XVIII.

Charge: Rape.
Age: 25.
Convicted: 5 years. Served 1 year, 6 months. Received at penitentiary 9-16-20.
Paroled: 3-22-22.

Judge recommends parole because of condition of wife and children of applicant and death of the injured party. Prosecuting attorney writes: He was convicted under a charge of statutory rape, injured party being his wife's sister, the injured party is now dead and the applicant has a wife and three small children who are badly in need of care. Recommends parole for their sake.

Prosecuting attorney writes again strongly urging parole, writes several other letters urging hearing and consideration of board.

Mother and father of prosecutrix both write urging parole.

CASE XIX.

Charge: Perjury.
Age: 41.
Convicted: 3-16-21, 2 years. Served 3 months. Plead guilty to the illegal sale of liquor several years ago.
Paroled: 5-31-21.

Facts and record: Applicant swore falsely that he had never entered a house where it was alleged liquor was sold, proof was introduced that he had sworn falsely, drank heavily. Judge and prosecutor recommend parole in order that he may support his wife and seven children.

These cases will suffice to show that the provision that has been made in the State of Missouri for the support of innocent families of men who are committed to the penitentiary is inadequate. On the face of it, all of the men included in the cases listed above were convicted for serious charges. If it is to be the policy to punish by means of confinement in prison for such charges, then it is clear that Missouri should do as some other states have done, and provide some form of reasonable compensation for prisoners in order that their families may not suffer too greatly while they are deprived of their chief bread-winner. The State of Minnesota, for instance, has made a fairly good beginning in providing adequate compensation to prisoners for the labor which they give while they are incarcerated. Michigan placed 1422 convicts in highway camps in 1924 to construct a modern highway system, paying these men $1.25 per day.[1]

Another question that may well be raised is whether it is not preferable to draw upon the charitable and family welfare agencies in large cities, or even better, to draw upon a Mother's Pension Fund which should be provided by law in case mothers with children less than fourteen years of age are left without funds at the time of imprisonment of the chief bread-winner.

Another solution to the problem, in case the charges are less serious (and there are plenty of instances in which men who have dependent families are confined to the institution for such minor charges as stealing chickens) is to grant a judicial parole at the time of conviction. Such a practice, if adequate supervision is provided, is in conformity with the best correctional treatment. This is not recommended when the charge is a serious one, or when such a disposition of the case will undermine public confidence in the administration of justice.

Political Influence and Paroles.

Our study of the records shows that persons politically prominent are frequently entirely too active in trying to obtain paroles from the Missouri Penitentiary. Table X shows that in the majority of instances the records give no evidence of political influence, but Table X does not actually represent the situation as it would be presented if we could give a full picture of all of the forces that lie back of the paroles covered in this study. In many instances the correspondence connected with the paroles under discussion showed that there had been conferences with prison officers, and in these politicians, of course, played no small part.

Cases XX and XXI are quite typical of not the extreme, but cases in which there was obvious political pressure exerted which had a very definite bearing upon the granting of the parole.

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[1] It is significant to note that even though more than 2000 convicts have been trusted with the liberties of working on the highways, no serious offense has been committed by these trusties against another trusty or against a civilian. Less than 100 of the 2000 were returned to the prison for disciplinary reasons.

Biennial Report of Commissioners of Pardons and Paroles, 1923-24, pp. 22, 23.

CASE XX.

Charge: Murder 2nd deg.
Age: 70.
Convicted: 11-15-21, 10 years. Served 4 months.
Paroled: 3-28-22.

Judge recommends parole.

Prosecuting attorney writes: Applicant was sitting in front of his house and had his dog by his side when two men and two women passed along the street about 10:30 p. m., applicant's dog ran out and grabbed one of the men (deceased) by the leg. T——— tried to kick the dog loose, applicant ran out and hit T——— and T———hit back at him. Applicant then took his dog and went home, after party had gone two blocks applicant caught up with them and said "You are the one I am after" and fired two shots at T———, killing him. Prosecutor does not recommend parole.

Recommendations for parole from various persons of prominence.

CASE XXI.

Charge: Attempted robbery 1st deg.
Age: 25 years.
Convicted: 11-2-17, 10 years. Served 4 years and 10 months.
Paroled: 12-22-22.

9-20-20 Judge writes board and at later date writes other indifferent letters. Never makes a recommendation, but in one letter says he has no objection to the parole. He remarks in one letter that he is enclosing a statement of facts as prepared by a probation officer of St. Louis. That letter could not be found.

9-10-20 Assistant prosecuting attorney writes board: "In view of the punishment already meted out to him, recommend that 'justice be tempered with mercy' and that he be paroled."

10- 1-19 ——— Missouri senator writes from——— urging parole.

1- 6-21 ———of St. Louis, writes Governor: "At the very close of your administration, may I not take this occasion to remind you of your promise to parole ———a prisoner at the State Penitentiary to me."

In July, 1922, six of the jurors recommend a parole. Petition signed by 20 citizens of St. Louis.

CASE XXII.

Charge: Murder 2nd deg.
Age: 44.
Convicted: 3-27-18, 10 years. Committed 3-31-18.
Paroled: 3-31-22.

10-18-19 Judge writes prison board: "It was one of those cases on which a plea of guilty was entered,—never really learned true facts. I am wholly at loss to help the board in this case."

4-25-20 Judge writes: "Although I do not recall any of the facts of the case, the prisoner seems to have borne a good reputation in and around ———. *So far as I am concerned, it is immaterial to me whether the prisoner is paroled or not.*"

4-26-20 Prosecuting attorney writes: (After setting out facts at great length) "The defendant seems to be one of those afflicted with gun-toting disease, and probably would not have killed his man if he had not been a gun-toter."

12-18-21 Prosecuting attorney writes: "I have no objections to your paroling this man, if, in your judgment, you believe he has been punished sufficiently." The man to whom the prisoner was paroled was sheriff of——— county. On 11-20-20, he writes the prisoner, "I am sorry that you did not get out in October. I cannot see the reason why, as I have done all I could, but next week I will be in St. Louis and will get hold of the governor and see what I can do: if I cannot do anything now I know I can as soon as I get in office which will be the first of the year." (He was later elected sheriff.)

Letter from the sponsor shows the following: Parolee working regularly at $5.00 per day—associations sometimes undesirable—not law abiding in every respect—thinks he lived up to conditions of parole—regards his parole a success—has had no difficulties with him—and advises that political influence in obtaining paroles be "cut out."

One Parole Requires Others.

Cases frequently appear in which the only reason why the person is given a parole is because another person, who participated in the same crime with the individual, has been paroled. One prisoner who has had political influence and power has been able to obtain a parole, and as a result a parole was given to another prisoner simply because of the action taken toward his co-defendant.

Cases XXIII, XXIV and XXV are quite typical of the situation under discussion.

CASE XXIII.

Charge: Murder.
Age: 31. White.
Convicted: 3-17-16, 20 years. Served 5 years, 9 months. Committed 3-31-16, paroled December, 1921.

Prosecuting attorney writes, "X (prisoner's partner in crime) actually committed the murder, the prisoner was in the room with him. I am not certain just how much he had to do with it. I believe this man should be out because the man who really committed the murder has since been paroled."

Judge writes, but makes no recommendation, merely states that he is less guilty than his co-defendant. Many letters written, main argument in them is that the prisoner should be given a chance since his co-defendant has been paroled.

CASE XXIV.

Charge: Burglary, 2nd deg. and lar.
Age: 20.
Convicted: 8-29-21, 4 years. Served 1 year, 1 month.
Paroled: 10-17-22.

Judge writes that the prisoner with three others broke into a store and stole $8 worth of goods and that two were paroled and the older one who was the guiltiest wasn't apprehended. That the boy is of a good family and that he should be paroled. Prosecuting attorney signed the same statement that the judge signed.

CASE XXV.

Charge: Robbery 1st deg.
Age: 24.
Convicted: 3-14-16, 20 years. Served 6 years, 3 months.
Paroled: 6-30-22.

Judge writes: Applicant with another was guilty of holding up several parties during a short period of time, the sentences imposed were unusually long; since co-defendant has been paroled, and he believes that applicant has been sufficiently punished, recommends parole.

Role Played by Attorneys.

An examination of Table X shows that at least 47.37 percent of the successful applications for paroles of 1919-20, and 32.87 percent of such paroles of 1921-24 were handled before the prison board by attorneys. The author attended three monthly hearings for applications for parole during the latter part of 1925 and with one exception all cases coming before the board at these three hearings were handled by attorneys.

Many hearings for parole become the equivalent of a second trial with ex parte proceedings. If attorneys are permitted to be so active in handling applications for parole it is imperative in the interest of public welfare that the Department of Penal Institutions also have legal counsel at the hearings, because frequently questions of the legal rights of the applicant for parole, prior to his commitment, arise and opinions on such questions also should be given by a representative of the interests of the state rather than solely by a representative of the applicant for parole.

The manipulations of attorneys, however, in placing excessive pressure on prison officials for paroles should be discouraged, just as all other influences outside of the institution. The applicant's own conduct and fitness for parole should be the decisive criterion as to whether he is to be paroled.

The Problem of Youth.

One of the reasons frequently advanced as a ground for parole, as is indicated in Table IV, is the youth of the prisoner. This reason appeared in the records of one hundred of the offenders who were included in the Tables covered by this study. There is considerable justice in the position that a great many of the persons who are committed to the penitentiary should be gotten out and that their sentences should be abrogated by means of a parole, in view of the fact that such a large number of exceedingly young persons are committed to the institution.

Table XI contains the age of prisoners committed to the Missouri Penitentiary in 1924. This Table shows that 45.6% of the men were 24 years and less of age; that the modal age of the men committed was 24. The equipment and influence of the institution are entirely unsuited to the needs of young offenders, especially if they are first offenders and of course, a great many of them are. In fact, two out of every three persons committed are first offenders. As was pointed out in the previous report, Missouri is greatly in need of an intermediate reformatory which should be properly equipped to give the younger first offenders who are now committed to the penitentiary better correctional treatment. They are primarily in need of industrial training and of actual training in work. To be certain, their moral education cannot be ignored.

TABLE XI

AGE OF PRISONERS COMMITTED TO MISSOURI PENITENTIARY IN 1924

Age in Years	No. in Each Group	Age in Years	No. in Each Group
14	1	44	15
15	1	45	13
16	1	46	5
17	23	47	6
18	59	48	8
19	76	49	10
20	75	50	10
21	93	51	5
22	84	52	6
23	71	53	4
24	101	54	5
25	49	55	8
26	60	56	4
27	50	57	2
28	58	58	2
29	34	59	4
30	39	60	1
31	19	61	0
32	31	62	4
33	22	63	3
34	20	64	1
35	27	65	1
36	18	66	3
37	22	69	1
38	28	82	1
39	24		1283
40	23		
41	11		
42	23		
43	18		

Percentage of Parolees Who Make Good.

An attempt was made to discover what percentage of those who are paroled from the Missouri Penitentiary make good and what percentage become parole defaulters. Unfortunately, the prison board has made it a practice not to preserve the parole records of men after their paroles expire.

The applications and all papers bearing upon paroles granted are filed perfectly in the office of the Secretary of State in the Capitol Building, but the reports and records of men while they are on parole are not preserved after the parole expires. The reason mentioned by the authorities responsible for the destruction of these records for their action is that funds are lacking for the purchase of files in which to preserve these records. This is clearly unwise economy. It is parsimony. Efficiency in the long run is economy and efficiency requires that these records be preserved. At least a summary record should be preserved of the outcome of each parole. In fact, the parole department should be required not merely to make a general report to the Legislature at the end of each biennial period showing the number of persons returned to the institution for violation of parole but should be required to show in addition how many persons have violated their parole by failing to report; how many have absconded; how many have committed new crimes and have been recommitted to institutions in this state or in other states; such records would be of permanent value.

Complete reports of parolee's records while on parole could be found in the parole office for only 163. Of this number 77 paroles were still effective, the remainder having expired. The records available in the institution showed that 19 out of the total group of 384 paroles in the years 1921 to 1924 have been revoked. In addition to that, communication with the sponsors of most of the men whose parole record was no longer in the office, as well as such records as were obtainable, showed that there were 51 other parolees in this group who definitely violated some of the conditions of their parole but their paroles were not revoked. 39 of this group did not report regularly; 9 violated the law; 2 disappeared, and in one other instance, only the sponsor made reports and not the parolee. In other words, on the basis of these facts, it would appear that actually 5% of the paroles granted were revoked and that an additional 12.2% were not satisfactory.

It should be added, however, that for the greater part the paroles from the Missouri Penitentiary in recent years have been a success. The records of police departments in St. Louis, Kansas City, St. Joseph and Joplin were examined for all of the men who were paroled to those cities in order to find out whether they had any arrests against them prior to their commitment to the institution or after they were released on parole. For the greater part, these men had no records whatever.

It was found impossible to determine the outcome of the paroles that were granted in 1919 and 1920, due to the fact that the parole reports pertaining to these cases had been destroyed.

The Biennial Report of the Board of Pardons and Paroles for 1915 and 1916 shows that out of a grand total of 588 granted as a result of the activities of that board in the period from March, 1913, to December, 31 paroles were revoked and 43 additional cases were unsatisfactory. In other words, at the time when that report was made 12.6% were unsatisfactory. This is a comparatively low percentage of defaulters.

Paroling Authority.

Prior to 1913, paroles were granted, if granted at all, by the governor under the authority of the constitution,[1] which authorized him to grant commutations, reprieves and pardons upon such conditions and with such restrictions and limitations as he might think proper.

In 1913,[2] a Board of Pardons and Paroles was created. It consisted of three members appointed by the governor for a term of four years. The members of this board were required to give all of their time to the work of pardons and paroles. The law provided that they were to investigate fully all applications for executive clemency which came before the governor and that they were to make a written report of their findings together with recommendations thereon for the use of the governor.

The board thus created was an exceedingly efficient one and the records that were prepared by it to be presented at the end of each biennial period to the Legislature are by far the most satisfactory and most complete records that we have of parole work in Missouri.

In 1917, the Board of Pardons and Paroles was abolished and was succeeded by the Prison Board. The State Prison Board Act provided that the State Prison Board should investigate fully the merits of all applications for executive clemency which should come before the governor and after giving hearing this board should report the findings and recommendations to the governor.[3]

Since this provision has become effective, the procedure has generally been that one member of the board has been known as the parole commissioner and it has been his duty to devote all of his time to the consideration of applications for parole, to conduct interviews with persons interested in parole and to have supervision over the parole office. Regular hearings have been held once each month, at which time the entire board considered the applications that were before it and after it had arrived at a decision it presented its findings and recommendations to the governor. Final approval of all paroles must be given by the governor.

Eligibility for Parole.

The State of Missouri has never required that prisoners serve a minimum period of their sentence before they become eligible for making application for parole. Twenty states at the present time have fixed such a minimum requirement. Missouri also has no legal requirement in regard to the suitability of the home into which the prisoner is to be paroled nor is it required that he have employment guaranteed for him at the time of his release.

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[1] Art. V, Sec. 8, 1875.

[2] Laws Mo. 1913, p. 227.

[3] Laws Mo. 1917, p. 190, Sec. 133.

Eligibility has also depended too largely upon representations made by attorneys and friends who seek to obtain a parole for certain inmates. In the absence of any field parole officers, the merits of such representations cannot be properly substantiated. Then, too, the institution has never been equipped from the standpoint of individualizing the men and of keeping complete records on each man. Yet a careful study of each man is essential if paroles are to be given to those who are really worthy of them. In order to carry on the correctional work efficiently, for which the Missouri Penitentiary was established, provision should be made for a proper study of each person committed to the institution and complete records should be kept of the findings in such a study. This would require that the trial authorities attach to the commitment papers of each person committed a statement of the facts and circumstances attending the crime, together with all other available information in regard to the career of the prisoner prior to the trial, also information in regard to his habits, his associates, disposition and reputation. The institution on receiving the prisoner should record the date of admission, name, nativity, nationality, and all other facts that can be ascertained in regard to parentage, education, occupation and early social influences that may have a bearing upon the prisoner's delinquencies and crime. The institution should be required to examine the prisoner physically, to record his weight, stature, family history, to make a detailed record of his physical condition, such as condition of his heart, lungs, and other principal organs, a study of all deformities and disabilities, and to maintain a progress record covering the individual's history at the institution, not merely in regard to his conduct, but also in regard to his physical and mental condition. Such information makes it possible to individualize the criminal and to determine fairly accurately when he is ready for release.

Conditions for Parole.

The prison board has worked out what might be considered standard conditions upon which men are paroled. First, during the first year they are required to report regularly on the first day of each month; second, they must abstain from intoxicating liquors and from criminal associates; third, they are to be industrious, law abiding; fourth, they are to attend church regularly.

Resources Inadequate for Supervision and Aid.

In the past, one of the members of the prison board has devoted most of his time to the parole work and all of his work has been centered in the institution. There has been no field representative who might give careful supervision and aid to all men who are on parole. The net result of this policy has been that it has been difficult to enforce the parole conditions as outlined above. In fact, in the case study that was adopted, it was found that there were numerous violations of parole that were never followed by a revocation of parole due primarily to the fact that the paroling authority, having no field representative, was not in a position to enforce the conditions of the parole.

Policy of Present Administration Regarding Paroles.

The present administration has gone on record as being opposed to a liberal use of the parole. In fact it has been widely reported in the newspapers that the work of courts is not to be undone by granting paroles.

Such a policy does not take into consideration the real function of paroles; on the one hand they can be used to equalize the great differences in sentences imposed by different judges and juries for the same crime. The more important function of paroles is that of correctional treatment under more favorable and more normal conditions than can be provided at the institution, especially for first offenders after they have served a reasonable part of their sentence.

If paroles are administered efficiently to a reasonable number of prisoners in the institution it is a great aid in the building of the morale of the inmates. They will be concerned about making a good record, and properly stimulated by the parole officer a change of attitude toward law and order can be effected more readily.

In December, 1925, the prison board took action to release the secretary of the parole commissioner in the interest of economy. Without such assistance he is greatly handicapped because there is no one there to give attention to the large amount of clerical and stenographic work that arises in the parole department. The result is that the parole commissioner spends most of this time in the performance of clerical work, and he has little time for his important duties as parole commissioner.

THE PROBLEM OF RECIDIVISM

As stated in Part One, the most reliable test as to the value of any method of releasing prisoners from a correctional institution is the conduct of those who obtain their freedom. This test can be made by statistical methods in observing who enters the penitentiary. An examination of the conduct records (commitment papers) of the prisoners who entered the Missouri Penitentiary showed that one out of three had served a previous sentence in that or some other correctional institution.

Recidivism Increases by 100%.

Table XII shows that recidivism among those committed to the penitentiary has increased by more than 100% during the last twenty years. In 1905, 84.75% of all commitments were for the first time. In 1919, this was reduced to 69.8%, and in 1924 to 68.09%. These figures, of course, understate the actual extent of recidivism. In many instances the prisoner's own word at the time when he is received at the penitentiary, is the basis of the record regarding recidivism. There being no methods of identification at the Missouri Reformatory, it is impossible to determine accurately how many of those committed to the penitentiary have served previous terms at the reformatory.

Commitments of persons showing one previous commitment in the Boonville Reformatory, have increased from 3.5% in 1915, to 5.3% for the first nine months of 1925. Commitments showing one previous commitment to the Missouri Penitentiary have increased from 10.9% in 1915 to 12.1% in 1925.

TABLE XII

Growth of Recidivism Among Prisoners Committed to Missouri Penitentiary

	1905 %	1910 %	1915 %	1920 %	1924 %
Committed for first time	84.73	77.67	72.61	70.38	68.09
Prior sentence at Boonville	.80	2.91	3.57	3.99	4.97
Two prior sentences at Boonville	—	.24	.35	.46	.15
Three prior sentences at Boonville	—	—	—	.12	—
One prior sentence in Missouri Penitentiary	9.00	9.23	10.92	9.23	12.11
Two prior sentences in Missouri Penitentiary	3.53	2.55	2.86	2.17	2.48
Three prior sentences in Missouri Penitentiary	.23	.73	.99	1.14	.70
Four prior sentences in Missouri Penitentiary	.23	.24	.43	.12	.40
One prior sentence in foreign penitentiary	.80	4.86	7.06	9.64	8.46
Two prior sentences in foreign penitentiary	.23	—	—	—	—
Three prior sentences in foreign penitentiary	—	.24	—	—	—
One prior sentence in foreign reformatory	.45	.85	.14	2.17	2.10
Prior sentence in both foreign reformatory and penitentiary	—	.24	.14	.12	.08
Prior sentence in Missouri Reformatory and Missouri Penitentiary	—	.24	.93	.46	.46
	100.00	100.00	100.00	100.00	100.00

That recidivism is a serious problem among those released from the Missouri Penitentiary is further indicated by the fact that the Missouri Penitentiary contributed a larger number of recidivists to the penitentiary of the State of California for the fiscal year ending June 30, 1923, than any other state in the Union, excepting California itself.[1]

The most serious aspect of this whole problem of recidivism, is that a great many prisoners who are recidivists obtain any number of early releases, particularly by means of the seven-twelfths rule. Cases XXVI to XXIX inclusive are illustrative of premature releases recently made from the Missouri Penitentiary that must be regarded as mistakes because those released have been recommitted to the penitentiary for new crimes. It is at once obvious that not only have the prison authorities erred in releasing these offenders prematurely, but the trial officials have failed to treat these offenders as habitual criminals under the habitual criminal act.[2]

If recidivists were required to serve most of their sentences or their entire sentences, the community would at least be protected against their depredations for the period of their incarceration. Severity in dealing with them would also have a deterrent effect on others and it might save them from crime as a career.

CASE XXVI.

Charge: Burglary, 2nd deg. and larceny.
Age: 43.
Convicted: 9-23-25, 12 years.
Previous record as follows:
8-18-23 Convicted of grand larceny, sentenced to Missouri Penitentiary for 2 years; discharged on seven-twelfths time 10-17-24.
6- 2-17 Convicted of forgery, receiving a sentence of 7 1/2 years, receiving a merit commutation 12-8-21.
6-16-14 Convicted of grand larceny, sentenced to Missouri Penitentiary for three years; discharged under three-fourths time law 9-15-16.
12-13-12 Convicted of burglary, sentenced 2 years, discharged under three-fourths law, 6-12-14.

CASE XXVII.

Charge: Burglary and larceny.
Age: 30.
Convicted: 9-8-25, 25 years.
Previous record as follows:
4-29-24 Convicted of larceny from person, sentenced 2 years; merit release on seven-twelfths time 6-28-25.
12- 6-19 Convicted, charge not stated, sentenced for 5 years, discharged on seven-twelfths time 11-5-22.
3- 7-16 Convicted of robbery first degree, sentenced 5 years, commuted by the Governor 9-12-19.
9- 5-12 Convicted of robbery, third degree, sentenced 2 years, released under three-fourths law 3-4-14.

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[1] Bien. Report State Board of Prison Directors of California, 1923-24, p. 24.

[2] The Revised Statutes 1919, Sec. 3702, provide that repeaters receive the maximum sentence prescribed for the offense for which they are convicted. The practice of prosecuting attorneys to influence criminals to plead guilty works decidedly in favor of the repeater, because the facts regarding his recidivism are rarely developed as would be the case if a jury trial took place.

CASE XXVIII.

Charge: Burglary, 2nd deg.
Age: 49.
Convicted: 10-1-25, 4 years.

Previous record as follows:

1-18-24	Convicted grand larceny, sentenced 2 years; discharged seven-twelfths time, merit commutation 3-17-25.
1-15-19	Convicted larceny from dwelling, sentenced 2 years, released on seven-twelfths time, 3-13-20.
1-31-13	Convicted of burglary, second degree and larceny, sentenced 5 years, released under three-fourths law 10-30-16.
12-27-09	Convicted of grand larceny, sentenced 2 years; out under three-fourths law 6-26-11.
8-14-06	Convicted of assault to rob, sentenced 2 years; out under three-fourths law 2-13-08.

CASE XXIX.

Charge: Bogus check.
Age:
Convicted: 6-9-25, 2 years.

Previous record as follows:

1-29-24	Convicted of false pretenses, sentenced 2 years, discharged upon seven-twelfths time, 3-28-25.
10- 3-21	Convicted charge of bogus check, sentenced 2 years, released upon seven-twelfths time, 12-2-22.
4-12-20	Convicted false pretenses, sentenced 2 years, released seven-twelfths time, 7-5-21.

Good Time Releases and Recidivism.

There has been a definite causal relationship between the system of mechanical and absolute releases under commutation by the governor, the three-fourths law, the present seven-twelfths rule, and the rapid growth of recidivism. The cases summarized above give a very vivid picture of the situation. It requires no special knowledge of the best methods in correctional work to see that it is a great mistake to permit such a practice to exist. Most recidivists should be required to serve all of their sentence or if they are released prior to the expiration of their sentence, such releases should be conditional by means of parole so that the institution may retain at least some control and supervision over them until the expiration of their sentence. Such control would be useful to the individual in the difficult adjustment which he has to make.

It is worthy of mention that for the biennial period 1923-24, 53.8% of all releases from the Folsom Prison of California, which is used exclusively for recidivists, had to serve full time, 35.7% of the releases from that institution were paroles. This represents sound correctional treatment: either make the recidivist serve out his whole sentence, or if there is good evidence to indicate that he is worthy of conditional release, release him with close supervision.

California, Indiana and other states that have made it a policy to require recidivists to serve a larger portion of their sentence (if not their entire sentence) than is required of first offenders, and that have not released recidivists long before the expiration of their sentence, excepting by means of conditional release on parole, have caused their rates of recidivism to become progressively smaller.

Need of Educational Facilities.

There are, of course, other facts that enter into the problem of recidivism. One of these is inadequate education and schooling. Table XIII contains information in regard to the education of the first one thousand men received at the Missouri Penitentiary in 1925. *This table shows that 38.5% never passed the fifth grade; that 47.4% never passed the sixth grade; that 58% never reached the eighth grade.*

TABLE XIII

SCHOOLING OF FIRST 1000 PRISONERS RECEIVED MISSOURI PENITENTIARY IN 1925

No schooling	72
First grade	4
Second “	37
Third “	73
Fourth “	91
Fifth “	108
Sixth “	89
Seventh “	106
Eighth “	232
Ninth “	42
Tenth “	48
Eleventh “	9
Twelfth “	44
College 1 year	2
“ 2 “	6
“ 3 “	1
“ 4 “	4
College graduates	19
Business college	4
No record	9
	1000

The principal point we wish to make in this connection is that in the Missouri Penitentiary with this kind of raw material coming in the institution, and in spite of the fact that there have not been enough industries to employ more than about half of the men, nothing has been done to educate or to train the prisoners who are so much in need of the rudiments of general education. It would be possible to establish a first class school by means of the leadership that could be recruited directly from the inmates of the institution. There are enough persons who have completed high school and some who have completed college among the inmates to make it possible to organize an efficient school system by means of which a great many men might be fitted for a better adjustment after they are released from the institution. Such educational work should, of course, be under the supervision of an official competent to organize and supervise such work.

The Department of Penal Institutions is now attempting to develop resources for general and vocational education and for greater industrial activities.

The facilities for industrial training at the institution have been inadequate. Many of the young prisoners who have never been taught a trade and who, therefore, do not have an earning capacity which would enable them to make an honest living, have spent their days in the prison without being adequately prepared for the economic adjustment that they must make if they are to live as law-abiding useful citizens upon release.

Still another factor that enters into the rapid increase of recidivism is the herding together of prisoners of every class. There is no attempt to classify and to segregate prisoners according to past criminal record, age, or possibility for reformation. Many a youth committed for some indiscretion is locked up with hardened and experienced criminals to be trained in all the methods of perpetrating crime. The result is as a former parole office observed: "Many a youth with no criminal instinct is herded with vicious criminals, and at the time of his release he goes out as an educated criminal." The present overcrowded conditions accentuate this problem, because from two to five inmates live in a single cell. An intermediate reformatory and an aggressive policy of classification of all inmates of the correctional institutions are indispensable to the solution of this problem.

No Bookkeeping on Recidivism.

If the prison officials had compiled statistics on recidivism among those committed to the penitentiary in recent years, they would have known that something was wrong with the system of releases from the institution. No such statistics have been presented in their biennial reports of the institution to the General Assembly since 1916. In fact there has been no bookkeeping or stock taking of the human and correctional aspects of the problem of administration since that date. Elaborate statistics have been compiled for the General Assembly showing purchases and sales in the Industrial Department, but statistics and records which would indicate the nature of the correctional problem presented by prisoners committed, and which would give an index to the value of the real product of the institution, i. e. success of the institution in reforming criminals, have not been compiled. Without such facts prison officials work in the dark and intelligent far-sighted policies can hardly be formulated. A frequent and high turnover in staff has of course made it difficult to build up and maintain adequate records and statistics.

Domination of Partisan Politics the Chief Administrative Problem

Even as early as 1870 the First National Prison Congress in its Declaration of Principles said: "The two master forces opposed to the reform of the prison systems of our various states are political appointments, and a consequent instability of administration. Until both are eliminated the needed reforms are impossible."

These two master forces—the product of partisan politics—have made it impossible to realize any satisfactory standards in correctional work at the Missouri Penitentiary.

The official Bluebook of Missouri for the past twenty years shows that with every change in the state administration that has involved a change in party control, there has been an immediate heavy turnover in the staff of officers and employees of the penitentiary and also the Missouri Reformatory. On the basis of the record of party affiliations contained in the Bluebook published at the beginning of the second biennial period of each of the past five administrations, the staff of officers and employees at the Missouri Penitentiary was 100% representative of the party in office in two of the administrations and 95% in a third, 70% in the fourth and 78% in the fifth. All of these percentages represent the situation near the middle of each administration. If the figures for the end of each administration were available, they would show even a greater percentage.

The Bluebooks indicate also the residence of these employees and officials. They have come from practically every county in Missouri. In other words, the staff of officers and employees takes on the appearance of a state-wide political distribution of jobs.

The facts submitted above indicate that the penitentiary staff tends to be changed, irrespective of whether it is good or bad, whenever the party in power in state administration is changed, and another set of inexperienced persons comes in for a period of wasteful experimenting. When this set of officials and employees has been in office barely long enough to learn the elementary principles of correctional work, the management and administration is again taken out of their hands to be placed in the hands of another set of inexperienced officers and employees. Undoubtedly the majority of these employees and officers, especially those in control, desire to do the best thing for their charges; but they are handicapped by lack of experience and training. In the last analysis the public pays the bill for this wasteful process of experimenting—not merely in taxes to support the administration of criminal justice but by living in constant terror because too many of those who are liberated have not been reformed while under the supervision of inexperienced persons at the penitentiary and they continue their depredations when released.

BOARD WITH EQUAL REPRESENTATION NEEDED

The spoils system described above is not a superficial one which can be easily eliminated. Moreover, it is not a matter that can be blamed upon personalities. We are not dealing with personalities here. We are dealing with political party practice and traditions and party attitudes and party loyalties which are deeply ingrained and established in the political life of this great state.

No great reform can be effected in the correctional work of this institution unless we make the prison board non-partisan, that is, there should be equal representation from the two dominant political parties. Members of such a board should be removable only upon charges sustainable in court. Such a change would tend to eliminate the spoils system which has introduced chaos and constant confusion into prison administration in Missouri.

Such a change would make continuity of leadership possible. It would make tenure of office more certain. Until this change occurs we need not expect the Department of Penal Institutions to conceive far reaching and constructive policies or to use their influence in making those policies real.

Under the present arrangement necessary reforms tend not to be initiated from within and when outsiders champion them they frequently do not have the support of the officials of the institution. The result is that Missouri now lags twenty-five years behind when compared with those states that have placed their correctional work on the best basis.

RECOMMENDATIONS

The foregoing facts indicate very clearly that there are certain urgent needs which call for legislative and administrative changes at the Missouri Penitentiary. The most urgent of these, with reference to which recommendations are made, are the following:

1. It is recommended that the seven-twelfths rule be modified as follows:
    - A. That only first offenders who have been committed to the institution for the first time be considered for releases after they have served seven-twelfths of their sentences satisfactorily; that their releases if given at that time be made conditional releases under the parole regulations that have been adopted by the prison board.

B. That repeaters who by their repeated acts of crime have shown that they are unfit to be turned loose in a free community, be required to serve at least three-fourths of their sentences before they can be considered for release. In fact, most of them should be required to serve their full sentences. If released at all before the expiration of sentence, they too should be released conditionally, on parole.

2. It is recommended that the practice of granting special commutations be restricted so far as possible; that whenever occasions present themselves where a shortening of sentence is necessary in the interest of justice, that such prisoners be paroled and be released conditionally rather than receive an outright release, so that if their behavior does not justify that they be permitted to continue to live at large, they may be returned to the prison for the remainder of their terms.

3. It is recommended that more adequate provision be made for the health of prisoners, suffering from tuberculosis and other diseases, or from mental abnormalities.

4. It is recommended that the educational work be improved in the following manner:

A. That general school work be provided and required at least of all persons who have not reached the sixth grade.

B. Industrial training sufficiently diversified to train men so that they will be able to earn a living when released is an objective toward which to work.

5. It is recommended that an intermediate reformatory be provided to which all first offenders who are between seventeen and thirty years of age may be committed.

6. All prisoners sentenced to hang should be delivered to the Missouri Penitentiary for execution of sentence. This would save the state a great deal of money, it would prevent the stirring of morbid impulses in the local community and the execution of the sentence at the penitentiary would perhaps have a deterrent effect upon the inmates.

7. It is recommended that the prison board be composed of an equal number of representatives of the two dominant political parties. Appointments to office and tenure should be based upon efficiency.

8. It is recommended that the parole department be strengthened; that at least one field parole officer be provided to assist in supervising and aiding persons on parole.

APPENDICES

APPENDIX I: SCHEDULE FOR FELONY CASES

Place

POLICE
Name...W—C—M—F
Charge...
....
Date Arrest..........................192.......... Age..........................
Disp...
....

CIRCUIT OR PROS. ATTY.
Warrant refused, Date..192.......
Reason...
....
....

PRELIMINARY EXAM.
No.............................. Warrant Issued..........................192.......
Charge...
....
Set for Hearing..192..........
Cont. to..............................192......., ...192.......
..............................192......., ...192......., ...192.......
Disp...
....

CIRCUIT OR PROS. ATTY.
No Inf. Issued: Reason...
....
....
No True Bill..............................192.......
Remarks: ....
....
....
....
....
....

CIRCUIT COURT
No.............................. Div..............................
Charge...
....
..................Inf. filed..............................192....... ....Ind. filed
Arraigned..............................192....... Set for Tr..............................192.......
1. ....192.......
Pleas 2..............................192.......
3. ....192.......
Cont. to..........192......., ...192......., ...192......., ...192..........
..........192......., ...192......., ...192......., ...192..........
Tried..............................192....... Disp..............................192.......
Nature of Disp...
....
Modification of Sentence..192.......
Nature of Modif...
....
..............................Paroled..............................192.......
App. All..............................192....... App. Perf'd..............................192.......
Hearing S. C..............................192....... Disp. S. C..............................192.......
Disp. S. C...
Mandate Filed..............................192.......

Del. to Sheriff..............................192........ To Inst..............................192........
Institution..............................
Remarks: ....

BONDS

Type of Bond						
Judge						
Date Filed						
Amount						
Surety Name						
Returnable Court						
Date						
Bond. For. Date						
For. set aside. Date						
Reasons for For.						
For. made abs. Date						
Date Collected						
Amount Collected						
Cancelled. Date						
Released. Date						
New Bond Filed						
Surety's Name						
Remarks						

PAROLE—..............................192........ Term..............................
To Whom.............................. Address..............................
Conditions..
Parole Revoked..............................192........ Committed..............................192........
Reason..
....
Reparoled..............................192........ Term..............................
Conditions..
....
....
Discharged from Parole..............................192........

APPENDIX II: PROCEDURE IN FELONY CASES

When a crime is committed the victim, or someone having knowledge of the facts, usually reports it to the nearest officer of the law. In many instances the crime is committed within the view of some such officer. In incorporated communities maintaining a police force the information usually comes in the first instance to the police officer. Outside of the cities and towns the sheriff, constable, justice of the peace, or prosecuting attorney usually gets the initial information. If the grand jury is in session the information of crimes sometimes comes through a communication to, or through personal knowledge of, some grand juror. Generally speaking the prosecution is begun by an affidavit signed by some person who is known as the prosecuting witness. The prosecuting attorney is authorized to begin the prosecution by filing with the examining magistrate his own affidavit based upon his knowledge, information and belief of the contents thereof. If complaint is made through the grand jury which results in an indictment, the prosecution is begun by the finding of a true bill by the grand jury. In such latter case no preliminary hearing is required as the true bill in the nature of an indictment is filed direct in the circuit court and the case proceeds in that court to final disposition. The hearing in the grand jury room constitutes the only preliminary hearing which, under the constitution and laws of this state, the defendant is entitled to in a felony case where the charge is made by indictment. In addition to the charge by indictment, however, persons may be charged with a felony by direct action of the prosecuting attorney. In such case the affidavit of the prosecuting witness or the affidavit of the prosecuting attorney himself is filed in the office of a justice of the peace except in the City of St. Louis where such affidavit is filed in the office of the clerk of the court of criminal correction. Upon this affidavit a warrant is issued and the person named therein is arrested if he can be found. When arrested the accused is lodged in jail to await preliminary hearing unless he is able to give a bond for his appearance. Shortly thereafter a preliminary hearing is had before the justice or court of criminal correction, as the case may be, at which time the state must produce sufficient evidence to warrant the examining magistrate in finding that there is just cause to believe that the defendant is guilty of the crime with which he is charged. The defendant may waive such preliminary hearing, but is entitled to it if he demands it. In the event of a waiver of the hearing or a finding of just cause by the examining court, the defendant is bound over to await action by the grand jury or prosecuting attorney. If he is unable to give bond to answer to any charge that may be placed against him by the grand jury or prosecuting attorney he is confined in the jail pending such action. The prosecuting attorney may then file his information in the circuit court charging the defendant with the crime of which he was accused or he may present the case to the grand jury in his discretion. The prosecuting attorney has charge of the grand jury. He advises the grand jury on all legal matters and as a practical proposition usually controls the action of the grand jury. The signature of the prosecuting attorney is necessary to a true bill. If the grand jury declines to find an indictment the papers are returned into court endorsed "no true bill," in which event the defendant is discharged on his bond or released if in jail. If the grand jury investigation or action by the prosecuting attorney after the defendant is bound over at the preliminary hearing results in a charge being lodged against the defendant in the circuit court, a new warrant is issued by the clerk of the circuit court and served by the sheriff. The defendant is then re-arrested and either confined in jail to await his trial in the circuit court, or gives bond for his appearance in that court. The defendant is then arraigned and his plea taken, after which the case is tried at the convenience of the court unless he pleads guilty, in which event the judge fixes the punishment. If acquitted at the trial there is no appeal allowed by the state and the defendant is released. If convicted he is either confined in jail or released on bond pending motions preliminary to an appeal to the Supreme Court. In event of a plea of guilty or conviction the defendant may be paroled by the judge. If these motions on the part of the defendant are overruled by the court, the defendant files an affidavit of appeal and the appeal is allowed as a matter of course. The execution of the sentence of the trial court which is entered in accordance with the verdict of the jury may be stayed by the defendant giving a bond pending appeal, but unless such bond is given the defendant starts serving his sentence at once although his appeal is pending. The defendant is given a year from the date his appeal is allowed to file a short form of transcript of the record in his case in the office of the clerk of the Supreme Court, thereby perfecting his appeal in that court. If the appeal is perfected it is thereafter set down for hearing in the Supreme Court. If the Supreme Court affirms the judgment of conviction the sentence is executed. If the Supreme Court reverses the judgment the defendant is discharged. If that court reverses and remands the case for a new trial the procedure in the trial court starts all over again. If a change of venue is taken in the trial court the case is sent to some other county in which event the prosecuting attorney of the county where the original charge was lodged must follow the case and prosecute it in the county to which it was sent. This procedure is interrupted in homicide cases by a hearing before the coroner and a jury which usually takes place within a very short time, a day or so, after the body of the deceased is found. A more detailed outline of the operation of the courts and the powers and duties of the prosecuting attorneys will be found in the reports on "Preparation and Presentation of the State's Case," and "Judicial Administration," respectively.

APPENDIX III: MORTALITY OF CASES IN ST. LOUIS CITY AND JACKSON COUNTY

The following tables indicate the net result of the prosecution of cases involving a few important crimes in the City of St. Louis and Jackson County during a single year. They show the loss of cases at each step of the criminal process and show the final number of punishments meted out for the commission of these crimes.

Results of Cases in St. Louis City.
October 1, 1923–October 1, 1924

	Murder & Mans.	Burg.	Rob.	Larc.	Embezz. and Frauds	Forg.	Automobile Offenses	Total
Crimes Reported	149	2,701	2,075	4,277	369	758	3,115	13,444
Warrants Refused	14	49	132	160	38	43	20	456
A. Warrants Issued	49	217	247	276	64	66	45	964
B. Preliminary Exam.								
1. Dischargd		18	19	28	9	3	5	82
2. Disposed as Misdem.		7	15	51	23	5	4	105
3. Dism. Want of Pros.		1		6	6	3		16
4. Nolle Prosequi	2	5	9	31		4	2	53
5. Other Dispositions		10	15	13		4	2	44
6. Total	2	41	58	129	38	19	13	300
C. To Grand Jury or Circuit or Prosecuting Attorney	47	176	189	147	26	47	32	664
1. No Information or No True Bill		14	6	12		4	4	40
D. To Circuit Court	47	162	183	135	26	43	28	624
1. Nolle Pros.	1	16	30	11	3	3	2	66
2. Disposed by Act of Court	3	5	8	4	3	2	3	28
3 Tried & Acquitted	9	12	20	9	2	1	2	55
4. Other Dispositions	3	13	32	2		5		55
5. Total	16	46	90	26	8	11	7	204
E. Sentenced	31	116	93	109	18	32	21	420
1. Paroled		7	1	10	1	2	5	26
2. Appealed	6	2	7	4				19
3. Other Dispositions				1				1
4. Total	6	9	8	15	1	2	5	46
F. Punished	25	107	85	94	17	30	16	374

This table requires little comment. The reader may under a given crime follow the bold faced type and note at each step the surviving cases. Of robberies, there were 2,075 reported to the police of St. Louis. There were in the same year 379 warrants applied for at the circuit attorney's office.[1] In 132 of these cases the circuit attorney refused the warrants, in 247 they were issued. Of these 58 were disposed of in the preliminary hearing, leaving 189, of which 183 reached the circuit court. There 90 drop out, leaving 93 sentenced. Of these, 8 were not punished. The number punished represents 22 percent of the warrants applied for and only four percent of the crimes committed. It is only fair to say that many robberies may be committed by the same criminal but it is also fair to say that conditions under which a person may commit a robbery with only one chance in twenty-five of being punished for it are not conditions which tend to discourage crime.

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[1] Not necessarily in every case for one of these particular 2,075 robberies.

Let us now see what happens to the corporal's guard of criminals who are actually sent to the penitentiary for the commission of felonies. Of the total of 254 originally sentenced to the penitentiary, 40 were not sent there for the following reasons:

Commuted to Reformatory	30
Paroled by Judge	8
Bond Forfeited	1
Pending on Motion for New Trial	1
	40

So 214 were actually sent to the penitentiary. After a period of from 13 to 25 months, their status was as follows:

Status on November 1, 1925, of All Prisoners Sentenced to Penitentiary from St. Louis City, Oct. 1923–Oct. 1924

Length of Sentence	Number Sent.	Released	Serving	Appealed	Status of Appeals: Trans. not filed Serving	Trans. not filed Rel. on bd.	Trans. not filed App. Pend.	App. Dismissed	App. Pend. Serv.	Judg. Affd. Sent Exctd
2 yr.	100	76	20	4	1		3			
2-6/12 yr.	3	2	1							
3 yr.	14	3	11							
4 yr.	8		7	1			1			
5 yr.	52		48	4	1	2		1		
6 yr.	2		2							
7 yr.	5		5							
10 yr.	4		4							
12 yr.	1		1							
15 yr.	4		3	1	1					
20 yr.	5		3	2	1				1	
30 yr.	1			1	1					
35 yr.	1			1	1					
Life	11		9	2	1				1	
Death	3			3					2	1
Total	214	81	114	19	7	2	4	1	4	1

In Kansas City the facts are similar. The following table indicates the fate of cases involving murder, manslaughter, robbery, burglary, larceny and auto stealing, which originated in the police department in one column and those originating with other arresting and prosecuting officials in Jackson County in the other:

KANSAS CITY
October 1, 1923–October 1, 1924

Police Department					Prosecutor's Office		
Murder Manslaughter	Rob.	Burg.	Larc. of Auto		Murder Manslaughter	Rob.	Burg.
58	1,282	2,375	1,546	Crimes Reported	No record	No record	No record
29	22	13	8	Warrants Refused			
4				Released by Coroner			
42	171	57	6	A. **Warrants Issued**	22	130	72
				B. **Preliminary Examination:**			
7	23	4		1. Discharged	5	4	13
1				2. Disposed as Misdem.			2
10	43	8	2	3. Dismissed Want of Pros.	7	11	10
2	3	2		4. Nolle Prosequi		5	1
	6		1	5. Other Dispositions		3	1
20	75	14	3	6. Total	12	23	27
22	96	43	3	C. To Grand Jury, Circuit or Prosecuting Attorney	10	107	45
	1		1	1. No information, No true Bill		4	1
22	95	43	2	D. To Circuit Court	10	103	44
	3	1		1. Nolle Prosequi	1	25	2
6	32	8		2. Disposed on Action of Court	4	21	12
3	5	3		3. Tried & Acquitted		4	
	6	4		4. Other Dispositions	1	11	3
9	46	16		5. Total	6	61	17
13	49	27	2	E. **Sentenced**	4	42	27
		4		1. Paroled			
4	3	3	1	2. Appealed	1	9	
				3. Other Dispositions			
4	3	7	1	4. Total	1	9	
9	46	20	1	F. **Punished**	3	33	27

Of those sentenced to the penitentiary from Kansas City during the period mentioned the table on page 546 shows the disposition made of them.

There are many interesting conclusions which may be drawn from these figures. Perhaps that which concerns the punishments for homicide is most important. The rate of homicides in Kansas City is very high. For example, there were in 1924 no less than 131 homicides in Kansas City according to the coroner's report, a number

Status on November 1, 1925, of Prisoners Sentenced to Penitentiary From Kansas City on Charges of Murder, Manslaughter, Robbery, Burglary, Larceny of Autos.

October 1, 1923–October 1, 1924

Length of Sentence	No. Sent	Re-leased	Serv-ing	Ap-pealed	Status of Appeals					
					Trans. not filed Servg.	Trans. not filed Rel. on Bond	Trans. not filed App. Pendg.	App. Dis-missed	App. Pendg. Servg.	Rev. and Rem. Still Servg.
2 yr.	26	23	2							
2–8/12 yr.	1		1							
3 yr.	2	2								
4 yr.	10		10							
5 yr.	39		32	6	2	1	2		1	
6 yr.	1		1							
7 yr.	9		6	3	3					
8 yr.	3		3							
10 yr.	15		14	1	1					
12 yr.	3		3							
15 yr.	19		16	3	1					2
20 yr.	3		3							
25 yr.	5		1	4	2		1		1	
30 yr.	4		2	2			1			1
35 yr	2		2							
39 yr.	1			1	1					
40 yr.	2		2							
Life..........	5		1	4	2		1		1	
	150	25	99	24	12	1	5		3	3

Note: 1 on 2 yr. Sentence; no record of any delivery to Penitentiary.
Note: 1 on 5 yr. Sentence; died in Prison Hospital.
Note: On 2 cases from Kansas City Records of Circuit Court did not note appeals being taken. But we found appeals had been filed when investigating at Jefferson City.

larger than many cities twice as large and within eleven of that of St. Louis. Combining the murder and homicide cases in both classes of cases above, we find that for 131 cases there were 64 warrants issued; of these 32, or exactly one-half, got into the circuit court, and 17 were convicted; of these 5 were sentenced but not punished, while only 12 were punished. This means that the commission of murder or manslaughter carries with it a very comfortable margin of safety. In fact, the chances for not paying any penalty are 11 to 1.

Approximate Ratio of Certain Crimes to Punishments in St. Louis and in Kansas City

October 1, 1923, to October 1, 1924

St. Louis		Kansas City (Police only)
6	Murder and Manslaughter......	11
24½	Robbery......................	28
25	Burglary.....................	118
1	To	1

This array of figures drawn from the official record, compiled with meticulous care, and with a stern sense of fairness tells a sorry tale. It is a tale of wasted efforts and of halting and fumbling administration. It is the tale of a legal system theoretically backed by a great body of honest citizens, created to protect the lives and property of a great state, losing, day after day and year after year, in its fight with a body of law breakers whose boldness increases as the efforts of law enforcement become more and more certainly ineffective and meaningless.

APPENDIX IV: CRIMINAL COSTS 1923-1924

	1923	1924
Clerk, Criminal Costs Auditor's Office	$3,000.00	$3,000.00
Missouri Penitentiary	926,537.37	995,764.74
Missouri Reformatory	314,262.99	294,144.10
Industrial Home for Girls (Chillicothe)	250,220.65	130,710.12
Industrial Home for Negro Girls	41,193.45	39,741.41
Attorney General (2/5ths)	18,643.72	17,872.76
Supreme Court (1/3rd)	42,150.59	42,150.00
Circuit Courts (1/3rd)	72,679.00	72,679.00
K. C. Court of Appeals (20%)	7,722.00	7,722.00
St. Louis Court of Appeals (20%)	15,446.00	15,446.00
Springfield Court of Appeals (20%)	8,942.00	8,942.00
Cost in Criminal Cases	239,941.11	291,742.00
Transportation criminals	33,077.00	42,260.00
Criminal Cost in counties	412,701.00	449,903.00
Secretary of State (clerk, paroles)	2,400.00	2,400.00
Total to state	$2,388,916.88	$2,414,477.13
Police Costs	6,326,468.54	6,769,160.03
	$8,715,385.42	$9,183,637.16

The above results were obtained from actual figures from approximately eighty percent of the territory in the state and from ninety to ninety-five percent of the actual total cost. To the actual figures were added conservative estimates of the costs in the unreported areas based upon population and number of towns having local police organizations. So the figures given are very close to absolute accuracy. It is customary to add to the cost of apprehending, prosecuting and punishing criminals the losses sustained as a result of the operations of criminals. The latter figures must of necessity be approximates. The most reliable, as well as the most recent estimate, was made by the Bureau of Public Affairs of the American Institute of Accountants, in their bulletin dated October 1, 1924:

> "The total annual losses from financial crimes have been estimated by fidelity and surety company officials to amount each year in this country to the stupendous total of three billion dollars—a sum comparable to the value of the entire annual imports of the nation."

Assuming that Missouri is no better and no worse than the average agricultural, mining and manufacturing state of the Union, the fair proportion of this loss which could be ascribed to Missouri could conservatively be placed at eighty-five million dollars. No other function of government except education results in such a tremendous cost to taxpayers as this one. Are the results justifying the cost?

APPENDIX V: FORMS OF INDICTMENT

A. Form of Indictment for Murder at Common Law

2 Jones Blackstone—Appendix, p. 2695.

Warwickshire, to-wit	Be it remembered * * * then following recital of organization of Court, Grand Jurors are named—following their names indictment proceeds:

"good and lawful men of the county aforesaid, then and there impaneled, sworn, and charged to inquire for the said lord the king and for the body of the said county, it is presented, that Peter Hunt, late of the parish of Lighthorne, in the said county, gentleman, not having the fear of God before his eyes, but being moved and seduced by the instigation of the devil, on the fifth day of March, in the second year of the reign of the said lord the king, at the parish of Lighthorne aforesaid, with force and arms, in and upon one Samuel Collins, in the peace of God and of the said lord the king, then and there being, feloniously, willfully, and of his malice aforethought, did make an assault; and that the said Peter Hunt with a certain drawn sword, made of iron and steel, of the value of five shillings, which he, the said Peter Hunt, in his right hand then and there had and held, him the said Samuel Collins, in and upon the left side of the belly of him, the said Samuel Collins, then and there feloniously, willfully, and of his malice aforethought, did strike, thrust, stab and penetrate; giving unto the said Samuel Collins, then and there, with the sword drawn as aforesaid, in and upon the left side of the belly of him the said Samuel Collins, one mortal wound of the breadth of one inch, and the depth of nine inches, of which said mortal wound he, the said Samuel Collins, at the parish of Lighthorne aforesaid, in the said county of Warwick, from the said fifth day of March in the year aforesaid until the seventh day of the same month in the same year, did languish, and languishing did live; on which said seventh day of March in the year aforesaid, the said Samuel Collins, at the parish of Lighthorne aforesaid, in the county aforesaid, of the said mortal wound did die; and so the jurors aforesaid, upon their oath aforesaid, do say that the said Peter Hunt him the said Samuel Collins, in manner and form aforesaid, feloniously, willfully, and of his malice aforethought, did kill and murder, against the peace of the said lord the now king, his crown and dignity."

B. Forms Provided by Statutes of Arkansas and Now in Use There

Murder First Degree

State of Arkansas
vs. } Indictment
William Hardie

The Grand Jury of Johnson County, in the name, and by the authority of the State of Arkansas, accuse William Hardie of the crime of murder in the first degree, committed as follows:

The said William Hardie on the first day of March, 1904, in the County of Johnson, aforesaid, feloniously, willfully, deliberately, and of his malice aforethought, with premeditation, did kill and murder Henry T. Clements, by shooting him in the head and body of him the said Henry T. Clements, with a pistol loaded with a leaden bullet, from the effects of which he died on March 2, 1904; against the peace and dignity of the State of Arkansas.

Murder Second Degree

State of Arkansas
vs. } Information
John Doe

................, the Prosecuting Attorney of Johnson County, in the name, and by the authority of the State of Arkansas, accuse John Doe of the crime of murder in the second degree, committed as follows:

The said John Doe, on the 15th day of January, 1904, in the County aforesaid, did feloniously, and with malice aforethought, kill and murder John Smith by stabbing him with a knife, from the effect of which he died on January 16, 1904; against the peace and dignity of the State of Arkansas.

....
Prosecuting Attorney.

Witness:
....

Manslaughter

State of Arkansas
vs. } Indictment
John Doe

The Grand Jury of Pulaski County, in the name, and by the authority, of the State of Arkansas, accuse John Doe of the crime of manslaughter, committed as follows, viz:

The said John Doe, on the tenth day of January, 1904, in the County aforesaid, did feloniously and willfully kill John Smith by stabbing him with a knife, from the effect of which wound he died the next day, against the peace and dignity of the State of Arkansas.

Wm. Gay,
Prosecuting Attorney.

Witnesses: Richard Roe
Thomas Knox

Rape

State of Arkansas
vs. Indictment
John Doe

The Grand Jury of Pulaski County, in the name, and by the authority, of the State of Arkansas, accuse John Doe of the crime of rape, committed as follows, viz:

The said John Doe did, on the tenth day of January, 1904, in the County aforesaid, feloniously, forcibly, unlawfully, and against her consent, carnally know Emma Dean, against the peace and dignity of the State of Arkansas.

Wm. Gay,
Prosecuting Attorney.

(See Warner vs. State, 54 Ark. 660.)

Witnesses: Richard Roe
Emma Dean and
Thomas Knox

Robbery

. . . .
vs. . . . .
. . . .

The Grand Jury of Pulaski County, in the name, and by the authority, of the State of Arkansas, accuse John Doe of the crime of robbery, committed as follows, viz:

The said John Doe, on the tenth day of January, 1904, in the County aforesaid, feloniously and violently took a watch, the property of Richard Roe, of the value of ten dollars, from the person of the said Richard Roe, and against his will, against the peace and dignity of the State of Arkansas.

Wm. Gay,
Prosecuting Attorney.

(See Boles vs. State, 58 Ark. 35.)

Witnesses: Richard Roe
Thomas Knox

.... }
vs. } ....
.... }

The Grand Jury of Pulaski County, in the name, and by the authority, of the State of Arkansas, accuse John Doe of the crime of perjury, committed as follows, viz:

The said John Doe, on the tenth day of January, 1904, in the County aforesaid, on his examination as a witness, duly sworn to testify to the truth, the whole truth, and nothing but the truth, on the trial of a civil action in the Pulaski Circuit Court, between John Brown, plaintiff, and Richard Roe, defendant, which Court had authority to administer such oath; feloniously, falsely and corruptly testified that (here insert the statements alleged to be false); the matter so testified being material, and the testimony being wilfully and corruptly false, against the peace and dignity of the State of Arkansas.

Wm. Gay,
Prosecuting Attorney.

Witnesses: { Thomas Knox
Richard Roe

State vs. *Nees,* 47 Ark. 553.
Thomas vs. *State,* 51 Ark. 138.
Marvin vs. *State,* 53 Ark. 395.
Robertson vs. *State,* 54 Ark. 604.
Mason vs. *State,* 55 Ark. 529.

C. The Arkansas Provisions

The Constitution of Arkansas, Article II, declares, in Section 8, that no person shall be held to answer a criminal charge, unless on presentation or indictment of a Grand Jury; and in Section 10, that the accused is to be informed of the nature and cause of the accusation against him, and have a copy thereof.

The Statutes of Arkansas contain the following provisions:

"Sec. 3014—WHAT DEFECTS DISREGARDED. No indictment is insufficient, nor can the trial, judgment, or other proceeding be affected by any defect which does not tend to the prejudice of the substantial right of the defendant on the merits."

"Sec. 3012—REQUISITES. The indictment must be direct and certain as regards:

"First: The party charged;
"Second: The offense charged;

"Third: The county in which the offense was committed;
"Fourth: The particular circumstances of the offense charged, where they are necessary to constitute a complete offense."

"*Sec. 3013—SUFFICIENCY.* The indictment is sufficient if it can be understood therefrom:

"First: That it was found by a grand jury of a county, impaneled in a court having lawful authority to receive it, though the name of the court is not accurately stated;
"Second: That the offense was committed within the jurisdiction of the court, and at some time prior to the time of finding the indictment;
"Third: That the act or motion charged as the offense, is stated with such degree of certainty as to enable the court to pronounce judgment on conviction, according to the right of the case."

"*Sec. 3028*—The language must contain:

"First: The title of the prosecution, specifying the name of the court in which the prosecution is presented, and the names of the parties;
"Second: A statement of the acts constituting the offense, in ordinary and concise language, and in such a manner as to enable a person of common understanding to know what is intended."
"*Sec. 3029*—It may be substantially in the following form:

Pulaski Circuit Court

State of Arkansas
vs.
George Smith

"The Grand Jury of Pulaski County, in the name," etc., as in those given above.

APPENDIX VI: RECORD FORMS

A. Abstract of Records

Left hand page Name, address, and personal description of defendant	Proceedings before Judgment Transcript of preliminary examination filed...... .... Before whom held.......... Amount of bond $..........Surety.......... By whom taken.......... Indictment-information filed.......... Crime charged..........	Disposition.......... .... Crime for which convicted.......... .... Date of conviction...... .... Judgment or sentence .... Book and page.......... ....

Right hand page Proceedings after Judgment Appeal granted.......... Action of Appellate Court.......... .... Paroled.......... Prisoner discharged.......... Parole revoked.......... Stay of execution..........	Abstract of Records Date of delivery to jail or penal institution.......... Date of release.......... By whom released.......... Reason for release..........	Record Entries	No.

B. Parole Docket

State of Missouri vs.	Age..........years; color..........sex.......... Married or single..........place of Birth.......... Last Residence..........Crime.......... Punishment..........court record..........page.......... Date of Parole..........Expiration of parole.......... Amount of Bond..........Sureties..........

Conditions of parole..........

....

....

Court Orders

C. Report of Justice of the Peace to Clerk

Name of defendant..

Age....................Color..Married or single..

Offense charged...Date of arrest................................

Information filed..Plea of defendant..

Tried by jury? Yes / No   Tried by court? Yes / No   Plea of guilty? Yes / No

Date of judgment...................................Punishment assessed...

Was defendant committed to jail? Yes / No   Was fine paid? Yes / No

Acquitted..................................Dismissed by Prosecuting Attorney..

Remarks:...

....

....

....
Justice of the Peace

....Township or Ward

D. INDEX TO CIRCUIT COURT RECORDS

A			B			C			Co			D			E			F			G			H			IJ			K			L		
A	B	1	A	B	22	A	B	82	A	B	113	A	B	135	A	B	160	A	B	180	A	B	198	A	B	230	A	B	275	A	B	296	A	B	315
C	D	3	C	D	28	C	D	85	C	D	115	C	D	138	C	D	162	C	D	182	C	D	201	C	D	234	C	D	277	C	D	297	C	D	317
E	F	5	E	F	33	E	F	87	E	F	117	E	F	140	E	F	163	E	F	183	E	F	203	E	F	238	E	F	279	E	F	299	E	F	319
G	HI	7	G	HI	38	G	HI	90	G	HI	119	G	HI	142	G	HI	165	G	HI	185	G	HI	206	G	HI	243	G	HI	281	G	HI	301	G	HI	321
J	Jo	10	J	Jo	44	J	Jo	93	J	Jo	121	J	Jo	144	J	Jo	167	J	Jo	186	J	Jo	209	J	Jo	247	J	Jo	282	J	Jo	303	J	Jo	323
KL	M	13	KL	M	53	KL	M	98	KL	M	124	KL	M	148	KL	M	170	KL	M	190	KL	M	214	KL	M	253	KL	M	285	KL	M	306	KL	M	327
NO	PQ	15	NO	PQ	61	NO	PQ	102	NO	PQ	127	NO	PQ	151	NO	PQ	172	NO	PQ	192	NO	PQ	218	NO	PQ	260	NO	PQ	288	NO	PQ	308	NO	PQ	330
R	S	16	R	S	64	R	S	104	R	S	128	R	S	152	R	S	173	R	S	193	R	S	220	R	S	262	R	S	289	R	S	309	R	S	331
T	UV	18	T	UV	70	T	UV	107	T	UV	130	T	UV	155	T	UV	175	T	UV	195	T	UV	223	T	UV	267	T	UV	291	T	UV	311	T	UV	333
W	YZ	19	W	YZ	73	W	YZ	108	W	YZ	131	W	YZ	156	W	YZ	177	W	YZ	196	W	YZ	224	W	YZ	269	W	YZ	292	W	YZ	312	W	YZ	334

TO FIND NAME BY THIS INDEX TABLE:—Find FIRST LETTER of SURNAME, which are printed in alphabetical order at top of column divisions in large type. In the same column, underneath, find initial letter of first GIVEN NAME, and the figures following indicate page on which name should be found. Treat first principal word of Association, Corporation, or Firm Name, as Surname, and second principal word as Given Name.

NAMES			PARTIES	NUMBER OF CASE
			Plaintiff Defendant	

(Left Hand Page)

(These sheets are copied from a 640-page full size index book, used for both civil and criminal cases.

If index is to be used for criminal cases only the space reserved for "Parties" may be merged into that reserved for "number of case," thus increasing the space for case numbers.)

BOONE COUNTY, MISSOURI

M			Mc			N			O			PQ			R			S			T			UV			W			XYZ		
A	B	338	A	B	374	A	B	394	A	B	413	A	B	426	A	B	455	A	B	491	A	B	542	A	B	566	A	B	580	A	B	619
C	D	341	C	D	376	C	D	396	C	D	414	C	D	428	C	D	458	C	D	496	C	D	544	C	D	567	C	D	584	C	D	620
E	F	344	E	F	378	E	F	397	E	F	415	E	F	430	E	F	460	E	F	500	E	F	546	E	F	568	E	F	587	E	F	621
G	HI	346	G	HI	380	G	HI	399	G	HI	416	G	HI	432	G	HI	463	G	HI	505	G	HI	548	G	HI	569	G	HI	590	G	HI	622
J	Jo	349	J	Jo	381	J	Jo	401	J	Jo	417	J	Jo	435	J	Jo	466	J	Jo	510	J	Jo	552	J	Jo	570	J	Jo	593	J	Jo	623
KL	M	354	KL	M	384	KL	M	403	KL	M	419	KL	M	439	KL	M	469	KL	M	518	KL	M	554	KL	M	572	KL	M	599	KL	M	624
NO	PQ	358	NO	PQ	386	NO	PQ	405	NO	PQ	420	NO	PQ	443	NO	PQ	476	NO	PQ	526	NO	PQ	556	NO	PQ	574	NO	PQ	604	NO	PQ	625
R	S	360	R	S	387	R	S	407	R	S	421	R	S	445	R	S	478	R	S	529	R	S	557	R	S	575	R	S	606	R	S	626
T	UV	363	T	UV	389	T	UV	409	T	UV	422	T	UV	448	T	UV	482	T	UV	532	T	UV	560	T	UV	576	T	UV	610	T	UV	627
W	YZ	365	W	YZ	390	W	YZ	410	W	YZ	423	W	YZ	449	W	YZ	484	W	YZ	538	W	YZ	562	W	YZ	577	W	YZ	612	W	YZ	628

(Right Hand Page)
(The arrangement of GIVEN NAMES by columns on Index page, follows the same order of division as shown in the table. IN J group, given names Jo, like John, Joseph, and the like, are placed in the second column; all others in first column.)
(The headings and spacing on this sheet are identical with those on the left hand page.)

APPENDIX VII

Number of Cases Filed in Counties Reporting In 1923 and 1924

Adair	370
Andrew	74
Atchison	272
Audrain	120
Barry	100
Bates	60
Benton	75
Bollinger	10
Butler	350
Caldwell	57
Callaway	119
Camden	6
Cape Girardeau	80
Carroll	80
Carter	59
Cedar	40
Chariton	50
Christian	250
Clark	87
Clay	125
Clinton	39
Cole	83
Cooper	125
Crawford	64
Dallas	43
Daviess	115
DeKalb	38
Dent	263
Douglass	272
Dunklin	400
Gasconade	22
Gentry	60
Grundy	70
Harrison	59
Henry	60
Hickory	114
Holt	101
Howard	36
Howell	60
Iron	60
Jefferson	100
Johnson	154
Knox	75
Laclede	100
Lafayette	50
Lawrence	200
Lewis	35
Lincoln	35
Livingston	75
McDonald	141
Macon	216
Madison	65
Maries	31
Marion	80
Mercer	40
Miller	50
Mississippi	400
Moniteau	70
Montgomery	60
Morgan	78
Newton	158
Nodaway	100
Oregon	132
Osage	40
Pemiscot	200
Perry	16
Pettis	166
Pike	75
Platte	30
Polk	44
Pulaski	54
Ralls	83
Randolph	200
Ray	215
Reynolds	40
Ripley	60
St. Charles	132
St. Clair	211
St. Francois	500
Ste. Genevieve	5
St. Louis Co.	745
Saline	100
Scotland	47
Scott	240
Shannon	110
Shelby	60
Stoddard	175
Stone	100
Sullivan	50
Taney	60
Texas	100
Vernon	300
Warren	26
Washington	75
Wayne	125
Webster	100
Worth	200
Wright	107
	11,704

APPENDIX VIII: QUESTIONNAIRE TO SPONSORS OF PAROLEES WHO VIOLATED THEIR PAROLE

Points on which information is desired regarding the parole of

1. Specifically, how did he violate the conditions of his parole?
2. Did he go to work immediately when paroled? If not, why not?
3. Did the industrial training at the reformatory prepare him properly for work?
4. Were the home conditions into which he was paroled wholesome? If not, why not?
5. Was his neighborhood wholesome?
6. Did he associate with others who were criminally inclined?
7. How do you think his reformatory experience affected him; did it help or hinder him? If so, in what respects?
8. Do you think it would have been advisable not to parole him so soon?
9. How long and under what circumstances did you know him before he was paroled to you?
10. How often did you see him while he was paroled to you?
11. Were you able to help him find work?
12. Were you able to act as his first friend and adviser constantly?
13. What difficulties did you have in helping him?
14. Indicate how our parole system at the reformatory can be improved.

APPENDIX IX: SCHEDULE EMPLOYED IN STUDY OF INSTITUTIONAL PAROLES

Name..True Name..
Parole Add.......................... ...............-W-C........-M-F...............Age at Conv.....................
Parents...Living...............Single...............Married..............
Crime... Sentence................... Yrs. Served............... Months....
Date Convict...Received at...............................Date.........................
Court of.....................................Previous Criminal Record...................................... Term
Date App. for Parole ....Appr....................................Date....................................
Petitioner's Name.................................Parole Expires...
Reasons for Petition...
....
....
Reformatory Record...Merit Points...
To Whom Paroled...Address.......................................
Date Released..Revoked.....................................Reasons....................
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Parole Record...........................Employer......................Salary...........................Church.............
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Police Record..
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Juvenile Court Record...
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APPENDIX X

The more important of the specific statutory provisions with respect to the duties of prosecuting attorneys in Missouri concern actions for the enforcement of laws relating to the following subjects:

Attorneys dividing fees with laymen;

R. S. Mo. 1919, section 688.

Sanitary conditions of bakeries;

R. S. Mo. 1919, section 6849.

Forfeitures of charters of certain associations;

R. S. Mo. 1919, section 10276.

Vital statistics;

R. S. Mo. 1919, section 5818.

Breach of trust where property is held in trust in fiduciary capacity;

R. S. Mo. 1919, section 3612.

Prosecution of clerk of court who has been guilty of misdemeanors in office;

R. S. Mo. 1919, sections 2126, 2127, 2128.

Recovering fines imposed on foreign corporations doing business in Missouri in violation of law;

R. S. Mo. 1919, section 9793.

And actions to repeal charters or revoke licenses of such corporations;

R. S. Mo. 1919, section 9844.

Dairies;

R. S. Mo. 1919, section 11988. This section makes it a misdemeanor for which the prosecuting attorney may be suspended for failure to enforce this law.

Practicing dentistry or dental surgery in violation of law;

R. S. Mo. 1919, sections 12647, 12654.

Ditches, drains and levees;

R. S. Mo. 1919, section 4708.

The operations of railroads;

R. S. Mo. 1919, sections 10031, 10033.

And non-resident railroad companies doing business in the state without a license;

R. S. Mo. 1919, section 9972.

Forfeited recognizances to keep the peace;

R. S. Mo. 1919, section 3754.

Officials failing to give time to performance of duties or who may be guilty of violation or neglect of official duty;

R. S. Mo. 1919, section 9176.

Violations of election laws of the state;

R. S. Mo. 1919, sections 4744, 5027, 5032, 5035.

Recovery of amounts escheating to the state;

R. S. Mo. 1919, sections 5311, 5314.

Railroad companies violating statutes prohibiting them from discriminating between express companies in furnishing facilities;

R. S. Mo. 1919, section 9997.

Official bonds of county collectors where they default in paying taxes and licenses into the state and county treasuries;

R. S. Mo. 1919, sections 12920, 13141.

Suits for back taxes against various public utilities;

R. S. Mo. 1919, sections 13045, 13060.

Violations of the law providing for the cutting and destruction of thistles;

R. S. Mo. 1919, section 12121.

The recovery of money on contracts relating to school lands;

R. S. Mo. 1919, section 5987.

Persons violating the "Uniform Seed" law;

R. S. Mo. 1919, section 12132.

Officers refusing to submit their books, papers and concerns to the inspection of the state auditor or his examiner;

R. S. Mo. 1919, section 13308.

Prosecution for violation of statutes providing for health and safety of employees in factories;

R. S. Mo. 1919, section 6809.

Statutes for the protection and preservation of fish and game;

R. S. Mo. 1919, section 6617.

Violations of pure food and drug laws;

R. S. Mo. 1919, sections 5693, 5734.

Forfeiture to the state of all land held by aliens in violation of law;

R. S. Mo. 1919, section 594.

Penalties imposed upon railroad for giving of passes or tickets to public officials;

R. S. Mo. 1919, section 3607.

Laws regulating dealing in stocks and bonds and inspection of grain;

R. S. Mo. 1919, sections 3579, 6026.

Violations of statute requiring hedge fences to be cut to height of not more than five feet;

R. S. Mo. 1919, section 10718.

The bond of ferrymen who fail to perform any duty required by law;

R. S. Mo. 1919, section 5548.

Violations of the statutes relating to fire escapes and to the health and safety of miners;

R. S. Mo. 1919, sections 10966, 7499.

Penalties for failure of mortgage loan companies to file statements showing financial condition and amount of expenses and liabilities;

R. S. Mo. 1919, sections 11910, 11911.

Statutes relating to transportation of nursery stock;

R. S. Mo. 1919, section 11970.

Druggists and pharmacists;

R. S. Mo. 1919, section 4729.

Railroad depots;

R. S. Mo. 1919, section 9899.

Bells and whistles on locomotive engines;

R. S. Mo. 1919, section 9943.

Practice of law without a license;

R. S. Mo. 1919, section 667.

Weighmen at mines;

R. S. Mo. 1919, section 7459.

Scales at mines and the inspection thereof;

R. S. Mo. 1919, section 5462.

Oils to be used for illuminating purposes in mines;

R. S. Mo. 1919, section 7482.

Dramshops, manufacture or sale of liquor, and prohibition laws generally;

R. S. Mo. 1919, sections 6525, 6594, 6596.

Aiding the probation officer in the performance of his duties;

R. S. Mo. 1919, section 2604.

Suits relating to income and inheritance taxes;

R. S. Mo. 1919, sections 577, 578, 583, 571, 375.

Laws regulating insurance companies;

R. S. Mo. 1919, section 6335.

Hotels, inns and boarding houses;

R. S. Mo. 1919, section 5891.

Fraudulent, collusive or erroneous income tax returns;

R. S. Mo. 1919, section 13123.

Forfeited bonds of officers of the state;

R. S. Mo. 1919, section 12043.

Laws requiring street railway cars to be provided with screens for motormen;

R. S. Mo. 1919, section 3678.

Property omitted from assessor's books;

R. S. Mo. 1919, sections 12825, 12847.

Failure of township collector to make settlement of his accounts;

R. S. Mo. 1919, section 13236.

Road districts and overseers;

R. S. Mo. 1919, section 10935.

And the law prohibiting manufacture and sale of adulterated candy;

R. S. Mo. 1919, section 3636.

The prosecuting attorneys of Jackson County, containing Kansas City, Buchanan County, containing St. Joseph, and St. Louis County, and the circuit and prosecuting attorneys of the City of St. Louis and their assistants, are required to devote their entire time and energy to the duties of their respective offices. It is unlawful for the prose-

R. S. Mo. 1919, sections 722, 780.

cuting attorney of St. Louis County or his assistants to practice as counsel or attorney in any court of the state in his own name or in the name of another, except in the performance of the duties of his office during his term, and in Jackson and Buchanan Counties and the

R. S. Mo. 1919, section 780.

City of St. Louis it is unlawful for these officers to accept any employment by any party except in civil cases other than (in) the State of Missouri.

R. S. Mo. 1919, section 723.

If any prosecuting attorney fails to attend any term of court having criminal jurisdiction in his county he is guilty of a misdemeanor.

R. S. Mo. 1919, section 745.

He shall not speculate in county warrants; is prohibited to enter

R. S. Mo. 1919, section 3342.

a nolle prosequi as to any indictment or to dismiss any civil or criminal suit in pursuance of any corrupt agreement; shall not

R. S. Mo. 1919, section 3199.

engage in the defense of any case which he has prosecuted while in office; is prohibited from using third degree methods to secure

R. S. Mo. 1919, section 3559.

confessions; and shall not take any fee, reward, promise, under-

R. S. Mo. 1919, section 3681.

taking, gift or valuable thing for promoting or procuring an indictment or prosecuting any person under penalty of forfeiture of office and confinement in the penitentiary. He is prohibited from dis-

R. S. Mo. 1919, sections 724, 725, 726, 727.

closing the fact of an indictment being found until the defendant has been arrested or recognized to answer to the charge. He and his

R. S. Mo. 1919, section 3873.

assistants are deemed guilty of the offense of bribery, a felony, punishable by imprisonment in the penitentiary from two to five years for accepting fees for signing prisoner's application for a pardon. The partner of a circuit or prosecuting attorney or assistant

R. S. Mo. 1919, section 776.

is prohibited from defending any person charged with felony or misdemeanor when it is the duty of such circuit or prosecuting attorney to prosecute the same.

R. S. Mo. 1919, section 774.

In cities having a population of five hundred thousand (St. Louis) it is the duty of the circuit attorney to attend all inquests in cases of violent death where a charge of felony may result, and to make an investigation into the causes of death.

R. S. Mo. 1919, section 777.

The prosecuting attorney in the City of St. Louis is given certain duties with respect to attending and prosecuting all suits brought in the St. Louis Court of Criminal Correction, and to appear in all cases appealed therefrom to the St. Louis Court of Appeals; to twice yearly, on the first of March and on the first of September, certify to the Board of Election Commissioners of St. Louis the names of persons convicted in the St. Louis Court of Criminal Correction of offenses disqualifying them to vote; to give to the governor on the first day of January and the first day of June each year a report of the offenses prosecuted and suggestions for preventing such offenses for which he is allowed $1,500.00 per annum, and to examine all fee bills from the St. Louis Court of Criminal Correction. His assistant is required to attend at the office on secular days to prepare complaints, affidavits, and pleas. It is the duty of the prosecuting attor-

R. S. Mo. 1919, section 13838.

ney and of the circuit attorney in the City of St. Louis to attend the Grand Jury when required; to examine witnesses in their presence and to give them advice, but it is also his privilege to, at all times,

R. S. Mo. 1919, section 3868.

appear before the Grand Jury to give them information and to interrogate witnesses for them, but he has no right to be present when the jury votes. Such officers must attend hearings on appli-

R. S. Mo. 1919, section 3869.

cation for writs of habeas corpus and represent the state at such hearings. It is the duty of the prosecuting attorney to examine each

R. S. Mo. 1919, section 1944.

bill of costs when delivered to him for allowance against the county and fee bills from the justices of the peace, and to enforce payment

R. S. Mo. 1919, sections 4185, 4194.

of fees and costs due the circuit court. He must appear in behalf

R. S. Mo. 1919, section 11022.

of the road districts of the various counties when suits are brought against poll taxpayers; shall file informations and proceed in quo

R. S. Mo. 1919, section 10679.

warranto against any person usurping an office, and to file infor-

R. S. Mo. 1919, section 2066.

mation in the juvenile court. He is required to file informations for

R. S. Mo. 1919, section 2597.

offenses cognizable before the justice of the peace where he has knowledge of the offense or where complaint has been made to him (the prosecuting attorney). He is required to attend all inquiries

R. S. Mo. 1919, section 3760.

into the sanity of a prisoner sentenced to death where the sanity of such prisoner is questioned. He is required to sign an indictment

R. S. Mo. 1919, section 4149.

in the event the Grand Jury finds a True Bill, and in the event of his failure or refusal so to do, may be required by the circuit judge to affix his signature to the bill. If a complaining witness makes an

R. S. Mo. 1919, section 3885.

affidavit setting forth the offense and files same with the circuit clerk, it is the duty of the prosecuting attorney to file an information thereon. He must give his opinion to justices of the peace, to the

R. S. Mo. 1919, sections 3849, 3850.

county court or any judge thereof, if required, on any question of law in criminal or other cases in which the state or county is concerned, pending before such officer. He must appear and prosecute

R. S. Mo. 1919, section 741.

all misdemeanors to be tried before any Justice of the Peace.

R. S. Mo. 1919, section 3792.

APPENDIX XI: PROSECUTOR'S SALARIES

County	Pop. U. S. Census 1920	Pres. Vote 1920	Population Based on Pres. Vote 1920 Multiplied By 5	Salary Based on U. S. Census Population	Salary Based on Statute
Adair	21,404	7,878	39,390	1,800.00	2,500.00
Andrew	14,075	6,429	32,145	1,100.00	2,500.00
Atchison	13,008	5,514	27,570	1,100.00	2,000.00
Audrain	20,589	9,409	47,045	1,800.00	2,500.00
Barry	23,473	9,049	45,245	1,800.00	2,500.00
Barton	16,899	6,814	34,070	1,200.00	2,500.00
Bates	23,933	9,708	48,540	1,800.00	2,500.00
Benton	12,989	4,915	24,575	1,100.00	1,800.00
Bollinger	13,909	4,949	24,745	1,100.00	1,800.00
Boone	29,672	12,890	64,450	2,000.00	5,000.00
Butler	24,106	7,442	37,210	1,800.00	2,500.00
Caldwell	13,849	6,688	33,440	1,100.00	2,500.00
Callaway	23,007	9,339	46,695	1,800.00	2,500.00
Camden	10,474	3,349	16,745	1,100.00	1,200.00
Cape Girardeau	29,839	12,273	61,365	2,000.00	5,000.00
Carroll	20,480	9,780	48,900	1,800.00	2,500.00
Carter	7,482	2,047	10,235	1,000.00	1,100.00
Cass	21,536	9,185	45,925	1,800.00	2,500.00
Cedar	13,933	5,495	27,475	1,100.00	2,000.00
Chariton	21,769	9,084	45,420	1,800.00	2,500.00
Christian	15,252	4,857	24,285	1,200.00	1,800.00
Clark	11,874	5,761	28,805	1,100.00	2,000.00
Clay	20,455	9,118	45,590	1,800.00	2,500.00
Clinton	14,461	8,514	42,570	1,100.00	2,500.00
Cole	24,680	10,081	50,405	1,800.00	5,000.00
Cooper	19,308	8,856	44,280	1,200.00	2,500.00
Crawford	12,355	4,358	21,790	1,100.00	1,800.00
Dade	14,173	5,507	27,535	1,100.00	2,000.00
Dallas	12,033	3,811	19,055	1,100.00	1,200.00
Daviess	16,641	10,118	50,590	1,200.00	5,000.00
DeKalb	11,694	5,189	25,945	1,100.00	2,000.00
Dent	12,318	4,264	21,320	1,100.00	1,800.00
Douglas	15,436	4,053	20,265	1,200.00	1,800.00
Dunklin	32,773	9,963	49,815	2,500.00	2,500.00
Franklin	28,427	11,733	58,665	2,000.00	5,000.00
Gasconade	12,381	4,978	24,890	1,100.00	1,800.00
Gentry	15,634	6,929	34,645	1,200.00	2,500.00
Grundy	17,554	7,973	39,865	1,200.00	2,500.00
Harrison	19,719	7,740	38,700	1,200.00	2,500.00
Henry	25,116	10,813	54,065	2,000.00	5,000.00
Hickory	7,033	2,713	13,565	1,000.00	1,100.00
Holt	14,084	6,556	32,780	1,100.00	2,500.00
Howard	13,997	6,888	34,440	1,100.00	2,500.00
Howell	21,102	6,869	34,345	1,800.00	2,500.00
Iron	9,458	3,071	15,355	1,000.00	1,200.00
Jefferson	26,555	10,595	52,975	2,000.00	5,000.00
Johnson	24,899	11,292	56,460	1,800.00	5,000.00
Knox	10,783	5,061	25,305	1,100.00	2,000.00
Laclede	16,857	5,754	28,770	1,200.00	2,000.00
Lafayette	30,006	13,734	68,670	2,500.00	5,000.00
Lawrence	24,211	9,935	49,975	1,800.00	2,500.00
Lewis	13,465	8,405	42,025	1,100.00	2,500.00
Lincoln	15,956	6,909	34,545	1,200.00	2,500.00
Linn	24,778	10,898	54,490	1,800.00	5,000.00
Livingston	18,857	8,856	44,280	1,200.00	2,500.00

County	Pop. U. S. Census 1920	Pres. Vote 1920	Population Based on Pres. Vote 1920 Multiplied By 5	Salary Based on Census Population	Salary Based on Statute
McDonald........	14,690	5,291	26,455	1,100.00	2,000.00
Macon...........	27,518	12,192	60,960	2,000.00	5,000.00
Madison.........	10,721	3,876	19,380	1,100.00	1,200.00
Maries..........	9,500	3,150	15,750	1,000.00	1,200.00
Marion..........	30,226	11,545	57,725	2,500.00	5,000.00
Mercer..........	11,281	4,274	21,370	1,100.00	1,800.00
Miller..........	15,567	5,474	27,370	1,200.00	2,000.00
Mississippi........	12,860	4,679	23,395	1,100.00	1,800.00
Moniteau........	13,532	5,994	29,770	1,100.00	2,000.00
Monroe..........	16,414	7,635	38,175	1,200.00	2,500.00
Montgomery.....	15,233	7,088	35,440	1,200.00	2,500.00
Morgan..........	12,015	4,780	23,900	1,100.00	1,800.00
New Madrid......	25,180	7,498	37,490	2,000.00	2,500.00
Newton..........	24,886	9,912	49,560	1,800.00	2,500.00
Nodaway........	27,744	12,493	62,465	2,000.00	5,000.00
Oregon..........	12,889	3,433	17,165	1,100.00	1,200.00
Osage...........	13,559	4,856	24,280	1,100.00	1,800.00
Ozark...........	11,125	3,082	15,410	1,100.00	1,200.00
Pemiscot.........	26,634	8,453	42,265	2,000.00	2,500.00
Perry...........	14,434	5,181	25,905	1,100.00	2,000.00
Pettis...........	33,813	15,355	76,775	2,500.00	4,500.00
Phelps..........	14,941	5,152	25,760	1,100.00	2,000.00
Pike............	20,345	8,963	44,815	1,800.00	2,500.00
Platte..........	13,996	6,102	30,510	1,100.00	2,500.00
Polk............	20,351	7,907	39,535	1,800.00	2,500.00
Pulaski..........	10,490	3,870	19,350	1,100.00	1,200.00
Putnam..........	13,115	5,321	26,605	1,100.00	2,000.00
Ralls............	10,412	4,197	20,985	1,100.00	1,800.00
Randolph........	27,633	11,968	59,840	2,000.00	5,000.00
Ray.............	20,508	8,165	40,825	1,800.00	2,500.00
Reynolds........	10,106	3,046	15,230	1,100.00	1,200.00
Ripley...........	12,061	3,676	18,380	1,100.00	1,200.00
St. Charles.......	22,828	9,213	46,065	1,800.00	2,500.00
St. Clair.........	15,341	5,706	28,530	1,200.00	2,000.00
St. Francois......	31,403	11,039	55,195	2,500.00	5,000.00
Ste. Genevieve....	9,809	3,088	15,440	1,000.00	1,200.00
Saline...........	28,826	12,812	64,060	2,000.00	5,000.00
Schuyler.........	8,383	3,637	18,185	1,000.00	1,200.00
Scotland.........	10,700	4,724	23,610	1,100.00	1,800.00
Scott............	23,409	8,579	42,895	1,800.00	2,500.00
Shannon.........	11,865	3,371	16,855	1,100.00	1,200.00
Shelby...........	13,617	8,134	40,670	1,100.00	2,500.00
Stoddard.........	29,755	9,441	47,205	2,000.00	2,500.00
Stone............	11,941	3,500	17,500	1,100.00	1,200.00
Sullivan..........	17,781	8,121	40,605	1,200.00	2,500.00
Taney...........	8,178	2,956	14,780	1,000.00	1,100.00
Texas...........	20,548	6,585	32,925	1,800.00	2,500.00
Vernon..........	26,069	10,246	51,230	2,000.00	5,000.00
Warren..........	8,490	4,133	20,665	1,000.00	1,800.00
Washington......	13,803	4,486	22,430	1,100.00	1,800.00
Wayne...........	13,012	4,552	22,760	1,100.00	1,800.00
Webster..........	16,609	6,509	32,545	1,200.00	2,500.00
Worth...........	7,642	3,450	17,250	1,000.00	1,200.00
Wright..........	17,733	5,748	28,740	1,200.00	2,000.00

APPENDIX XII: RECORD OF CORONER'S INQUEST

1. County.......... Inquest Conducted by..........
(Coroner or Justice of Peace)
2. Date of Inquest.......... 192.....
3. Name.......... White..... Colored.
4. Post Mortem by.......... Complete form filled out..... Yes..... No
5. Chemical Analysis by..........
6. Circuit Attorney or Deputy present..... Yes..... No..... No Record.
7. Stenographic Record..... Yes..... No. Depositions..... Yes..... No.
8. Exact Wording of Verdict..........
9. Names of Jurors..........

Remarks:

For Homicide Verdicts Only

10. Number of Witnesses Examined..........
11. Brief Digest of Testimony..........
12. Name of Person Charged With Crime..........
13. How Was His Alleged Guilt Discovered or Determined..........
14. Did the Inquest Materially Assist in the Fixing of Responsibility for the Crime? If so how?..........

Remarks:

APPENDIX XIII: QUESTIONNAIRE TO CORONERS

1. Name of present coroner....................................
Occupation or profession......................................
Name of coroner in 1924...... ....
His occupation or profession..............................

2. Number of cases requiring attention of your office in 1924....
In 1925 to date..............................
Please classify these according to the following possible verdicts:

	In 1924	In 1925
1. Homicide (Felonious)	....	....
2. Homicide (Justifiable)	....	....
3. Accident	....	....
4. Suicide	....	....
5. Without medical attention	....	....
6. All others	....	....

3. In how many of these were inquests or viewings held by yourself?................
By justices of the peace.....................

4. Please state on the following form the number of cases in which inquests *with juries* were held and the number of post mortems.

	Jury cases		Post mortems	
	1924	1925	1924	1925
1. Homicide (Felonious)	....	....	....	....
2. Homicide (Justifiable)	....	....	....	....
3. Accident	....	....	....	....
4. Suicide	....	....	....	....

5. By whom are post mortems usually conducted?.............
Is the same physician usually employed to make post mortems?
....

6. In how many cases were chemical examinations made?.......

7. In how many cases in 1925 has the prosecutor or his assistant attended an inquest?................. In what cases is the prosecutor notified by your office of an inquest?...........
....

8. Would you favor some provision by the state for post mortem and other technical services?..........................
....

9. Have you any other suggestions for changing the laws or for improving the system relating to coroners?................
....

APPENDIX XIV: QUESTIONNAIRE TO SHERIFFS

1. Please give names, duties, approximate yearly compensation of your deputies who perform regular services for your office:

Name.	Duties.	App. Yearly Compensation.
....	....	....
....	....	....
....	....	....
....	....	....

How many of these are full-time?..................

2. Does the county court pay the salaries of any of your deputies?

....

3. Total number of *felony* arrests made in 1924: By sheriff and his deputies:.............. By constables:...............

4. Total number of felony arrests made *without warrants* in 1924: .... Since January 1, 1925................

5. Do you keep a jail record?........... If so, what does it show in connection with each prisoner committed to jail?........

....

....

6. Do you keep a separate record of all crimes committed in your county whether arrests follow or not:

   (a) Where information comes to you personally or to your deputies? ....

   (b) Committed in your view or in the view of your deputies?

   ....

   (c) When reported to you by some other person or official having knowledge thereof?..........................

If so, what is the nature of that record?....................

....

....

Would you favor amending the law so as to require reports to your office by officials having knowledge of crimes committed?

....

7. Do you and your deputies personally investigate all crimes committed in your county, or do you act only when a warrant is issued?..

....

....

Do you believe that you should be expected to use your time and that of your deputies to investigate crimes reported by newspapers or otherwise to have been committed?...........

....

8. What is your opinion of a state police force or state constabulary to assist the sheriffs of the state in the enforcement of the criminal law?

....

....

9. Do you have any plan to suggest to meet the crime problems raised by modern conditions such as good roads, the automobile, etc.?...

....

....

....

....

....

....

....

....

Remarks:

....

....

APPENDIX XV: QUESTIONNAIRE TO PROSECUTORS

1. What is the approximate number of cases of all kinds handled by your office in 1923 and 1924?
2. What proportion of your time, if any, do you devote to private practice?
3. What is your salary under law of 1921 if it applies?
   What was your salary under prior law?
4. What is your age?
   What year were you admitted to the bar?
   How long have you served as prosecutor?
   If graduate of law school, give name of school and year of graduation.
5. Give names of two immediate predecessors and length of term of each.
6. Do you need assistants?
   If so, how many and at what salary?
7. Do you have a contingent fund?
   If not, would such a fund assist you in preparing cases?
8. Do you keep a record of warrants applied for?
9. Do you keep a docket or any book or file containing a record of action taken during progress of case?
   If not, do you consider it necessary and would you be able or willing to keep such a record if you had the clerical help?
10. Do you prepare any of the instructions for the court?
11. Do you examine the law in each felony case and prepare a trial brief?
12. Do you prepare written statements for witnesses to sign, or if they refuse to sign, for use in the trial?
13. Do you have any opportunity to get on the ground and interview witnesses or have them brought to office for interviews while evidence is fresh?
14. Do the sheriff and constables or police give you any assistance in working up your case, such as finding and interviewing witnesses, or bringing them to your office to be interviewed by you?
15. Do you or your assistants attend all coroners' inquests where it appears death is due to crime?
    If so, who notifies you of such cases?
16. Does the County Court authorize the expense of clerical help which you may need?

17. Are you able to prepare your cases on the law and facts as well or thoroughly as the average practitioner at your bar prepares the defense case?
    If not, is it due to lack of time, facilities or help?
18. Do you have in your office or easy of access a library containing approved texts, reference works such as Cyc. and C. J., L. R. A., A. L. R., R. C. L., and Southwestern reports, digests and advance sheets and citators and full sets of Missouri Supreme and Appeals reports and digests?
19. If you have the Southwestern advance sheets, do you have time to read the opinions in criminal cases in Missouri *as they are reported?*
    If so, do you keep a diary or handy reference book containing rulings on various points in such opinions?
20. Do you find the Change of Venue Law of 1921 any obstacle to the prompt and efficient handling of your docket?
    If so, kindly state as fully as you care to, just how it operates to hamper you in the performance of your duties.
21. Do you endorse on court papers or otherwise indicate on any record your reasons for nolle prosequeing cases?
22. In your opinion is the administration of justice in criminal cases hampered by:

    (a) Rulings of Supreme Court?
    (b) Procedural laws?

    If so, will you state which of such rulings or laws should be changed or modified?
23. What is the system of selecting juries in your county?

    (a) Grand.
    (b) Petit.

    Do you have any difficulty keeping the more intelligent jurors from being excused?
    What changes, if any, do you feel are needed in the system to procure better results?
24. When a felony case is appealed, do you notify the Attorney-General?
    If not, how do you determine whether or not the appeal is perfected in the Supreme Court?
25. Do you furnish the Attorney-General with a brief and statement of points and authorities?
26. Do you feel that a verdict of nine jurors should be sufficient to convict?

27. Would you favor repeal of the statute prohibiting the prosecutor to comment on the failure of defendant to take the stand in his own behalf?

And the statute giving the defendant a year within which to perfect his appeal in felony cases?

And the statutes allowing the defendant more challenges than the State?

28. Would you allow the State to take the depositions of witnesses:

    (a) In the presence of defendant?

    (b) In the absence of defendant, but with defendant represented by counsel as in civil cases?

29. Would you have the state given the same right of change of venue as defendant?

30. Would you favor a requirement that the defendant plead to the charge, setting forth his defenses with same particularity required in the charge?

31. In your judgment would the administration of justice be promoted if the trial judge had the same power to sum up the evidence and orally charge the jury at the conclusion of the case that the Federal Judges now have and exercise?

32. Just what in your opinion is accomplished by the Coroner in the administration of the criminal law?

33. What in your opinion is the necessity for a preliminary hearing?

34. Do you have any problem connected with bail bonds in your county?

If so, what would you suggest to afford greater protection to the State?

Remarks:

....

....

APPENDIX XVI: QUESTIONNAIRE TO JUDGES

1. What do you consider a fair division of your time between civil and criminal cases in your circuit?
2. Are continuances granted in criminal cases as of course upon consent of counsel?
3. Do you request or require the prosecuting attorney to make recommendations in the following instances:

   (a) As to punishment on plea of guilty?
   (b) Parole after plea of guilty?
   (c) Parole after conviction by jury?
   (d) Modification of sentence?

   If so, is such recommendation accepted?
4. What is the principal reason or reasons for continuances of criminal cases in your Circuit?
5. Would you suggest any change in the method of selecting Grand and Petit Juries?
6. Are the more intelligent jurors as a rule willing to serve or do they seek to be excused?
7. Do you have any rule or practice as to excusing jurors?
8. Do you ascribe any of the failures of justice in your courts to the jurors themselves?
   If so, in what respect?
9. In your opinion is our system of paroles from the boys reformatory at Boonville working satisfactorily?
   If you do not think so, what facts in your experience are the basis of your opinion?
10. Would you favor a law providing that first offenders sentenced to the Missouri Reformatory at Boonville shall not become eligible for parole until they have served a minimum of one year in the institution, with a record of good conduct.
    Recidivists shall serve at least one-third of their sentence with a record of good conduct before they become eligible for parole—in no instance, however, shall a recidivist become eligible for parole until he has served at least eighteen months, with a record of good conduct.
11. Is our system of pardons and paroles and commutations from the penitentiary working satisfactorily?
    If not, what facts in your experience are the basis of your opinion?

12. Would you favor a law requiring prisoners sentenced to the penitentiary to serve at least one-third of their sentence with a record of good conduct before they become eligible for parole, this one-third to be computed without benefit of the three-fourths sentence law or merit plan;
That recidivists committed to the penitentiary shall serve at least one-half of their sentence without benefit of the three-fourths sentence law and merit plan;
That persons receiving a life sentence be required to actually serve at least ten years before their sentence can be commuted.

13. What other legislative or administrative changes would you recommend to improve our system of paroles:
    (a) From the boys reformatory?
    (b) From the penitentiary?

14. Would you favor the adoption of an indeterminate sentence law with fixed minimum and maximum sentences for different crimes and which would authorize executive and administrative parole authorities to administer paroles only after minimum sentences had been served?

15. Do you deem it necessary that Missouri should provide an intermediate reformatory for first offenders from 17 to 30, inclusive, which would enable better classification of prisoners sent to the reformatory and penitentiary at the present time? In this connection it is suggested that if such an institution were provided 17 should be the maximum age limit of boys sent to the reformatory and first offenders between the ages of 17 and 30 who are now being sent to the penitentiary could be sent to the intermediate reformatory.

16. Judicial or court paroles.
    (a) What relation do you find exists, if any, between pleas of guilty and applications for paroles?
    (b) How and by whom are applications for judicial paroles investigated?
    (c) Is an attempt made in all instances to determine whether the applicant has a previous criminal record?
    (d) Is any attempt made to determine whether the applicant is a steady worker and whether his occupational record justifies such parole?

17. What legal or administrative changes, if any, would you recommend:
    (a) To make investigations of all applications for judicial paroles more thorough?

(b) To provide effective supervision of those whose sentences have been suspended by means of judicial paroles?

(c) Do you favor the enactment of a state-wide adult probation or parole law which would provide for the services of a part-time or full-time trained probation officer to be appointed by the Circuit Judge and to work under his supervision?

(NOTE: In addition to the above, proposed changes in statutes governing procedure were included in the questionnaire sent to judges.)

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